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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1613

AIR TRANSPORT LODGE 1894 of INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,

Petitioners,

—against—

WILLIAM TURNER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

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October Term, 1978
No. .....

AIR TRANSPORT LODGE 1894 of INTERNATIONAL ASSOCIATION OF MACHINISTS and AEROSPACE WORKERS, AFL-CIO, and INTERNATIONAL ASSOCIATION OF MACHINISTS and AEROSPACE WORKERS, AFL-CIO,

Petitioners,

- against -

WILLIAM TURNER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioners pray for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW.

The opinion of The Court of Appeals for the Second Circuit dated January 22, 1979 denying En Banc Review is unreported and appears at page 43a.

The opinion of the Court of Appeals for the Second Circuit dated December 4, 1978 is reported at 590 F2d 409.

The opinion of the Court of Appeals for the

Second Circuit dated October 20, 1978 is reported at 585 F2d 1180.

The opinions of the United States District Court for the Eastern District of New York (Constantino, J.) dated March 31, 1978 and October 31, 1978 are unreported and appear at 14a and 23a.

JURISDICTION

The judgment of the Court of Appeals was entered on December 4, 1978. A timely petition for En Banc Review by the Petitioners was denied on January 22, 1979, and this petition for certiorari was filed within ninety days of the latter date. This Court's jurisdiction is invoked under 28 U.S.C. &1254 (1) and in accordance with Supreme Court Rule 19.

QUESTIONS PRESENTED

1. What type of conduct constitutes activity inimical to a union so as to be reasonably pronibited under LMRDA &411(a)(2)?

2. Does membership and active participation in a communist organization fall within the exemption to LMRDA &411(a)(2) coverage pertaining to Communist Party membership for which a union can expel a member?

3. Is a provision in a Union's constitution too broad and vague under LMRDA &411(a)(2) when it prohibits advocating and activity in support of certain philosophies by its members?

STATUTE INVOLVED

Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. &411 (a)(2) provides as follows:

"FREEDOM OF SPEECH AND ASSEMBLY - Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings; Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

STATEMENT OF CASE

The issues in this case arose out of the expulsion of William Turner, a member of the IAM who was charged with violating the IAM constitution by his actions on behalf of and espousal of communist doctrine. Turner was charged and tried at the local union in compliance with due process and his expulsion was upheld by the IAM. Turner commenced an action in the Federal District Court to declare the article in the IAM Constitution under which he was charged to be in violation of the Freedom of Speech section of the LMRDA, &411(a)(2).

The District Court found that the IAM Constitution was vague, overbroad and violated the Freedom of Speech provision of the LMRDA. On appeal the Court of Appeals remanded the case to the District Court for entry of a final judgment and clarification of the District Court's holding while the Court of Appeals retained jurisdiction of the case. The District Court rendered a second

decision again holding that the section of the IAM Constitution in question, Article L&3, was in violation of the LMRDA &411(a)(2) and was vague and overbroad. The Court of Appeals affirmed the District Court holding in a decision that included a concurring opinion. The Court of Appeals denied a petition for en banc review.

FACTUAL BACKGROUND

William Turner, an employee at Varig Airlines at Kennedy International Airport, was a member of Lodge 1894, IAM from 1971 until 1976. In December, 1975, Turner was a candidate for shop steward. During the election campaign Turner issued bulletins as to his revolutionary communist philosophy and membership in the Progressive Labor Party.[1] During the same time Turner was constantly advocating the violent overthrow of the United States government by force and killing of capitalists, with special emphasis on the Rockerfeller brothers.[2] Turner was distributing and selling the newspaper of the Progressive Labor Party "Challenge" to his co-workers. Turner identified an ad in the newspaper "Challenge" which offered to supply further information about the Progressive Labor Party as being his ad to a co-worker.[3]

According to an article in the December 4, 1975 issue of "Challenge" Turner had led a strike at Varig Airlines in 1973 and had organized support for strikes of other airline workers over the years.[4]

1. All of the documents referred to herein are Exhibits 1-6 of Exhibits of Turner Trial
2. All the time Nelson A. Rockerfeller was Vice-President of the United States.
3. Transcript of Turner Trial

In December 18, 1975, issue of "Challenge" the article below the mast heading states:

> Unless we can organize communist led groupings in every shop layoffs will continue. Unless we have these groupings more and more abuses will be heaped upon workers and we will just have to take it. Communist led groupings (fractions) can turn every shop into a battlefield. This will let the bosses know that they can't rely on their union goons to betray and lull workers every time they attack. Strikes and marches will become common-place. Today's sporadic strike will become tomorrows' rule. Workers will march to war against those who oppress them. It will be the ruling class who will have to retreat and give ground to the working class.
> Every campus must also be turned into a fortress against the bosses' cut backs and tuition hikes. Administration buildings must be seized and held until the cut-backs are reversed. Classes must be converted into centers of struggles against bossess' racist and anti-working class courses. Racist texts must be scrapped along with the racist teachers. Pro-boss ideas must be refuted and the schools become centers for communist organizing. On every campus we must force the administrators to bow to the just wishes of the students and honest faculty. Strikes must be organized to enforce our will.

The standard of the Progressive Labor Party as set forth immediately above the preceding paragraphs state the tenants of the Progressive Labor Party as follows:

> THE PROGRESSIVE LABOR PARTY FIGHTS FOR SOCIALISM.
>
> Socialism means liberation for the entire working class - the destruction of the bosses - a society[5]

of abundance and full employment - an end to exploitation - a secure and creative future for all workers - and an end to the racism, facism and wars that are all products of capitalism.

In order to achieve socialism, the capitalist system, the bosses and their dictatorial government must be crushed. This cannot be accomplished peacefully through elections.

It can only happen when the majority of the exploited unite behind communist leadership, violently overthrow the bosses, and install a new government of revolutionary workers - the dictatorship of the proletariat.

Members of the PROGRESSIVE LABOR PARTY are devoted to this goal. They dedicate their lives to actively building, promoting and organizing for the cause of revolutionary communism.

In one of the bulletins distributed by Turner he stated:

.....My membership in the Progressive Labor Party, working-class, revolutionary party, has taught me many valuable lessons about fighting for workers'rights. We learn from one another. Progressive Labor Party (PLP members and friends are active shop stewards and local union officers, in many unions, throughout the country.

In November 1975 charges were brought against Turner by fellow employees at Varig Airlines who were members of Local 1894 stating:

"We the members of IAM Local 1894 and employees of Varig Brazillian Airlines do hereby wish to bring to the attention of the Union that one of our fellow members (William Turner) is openly and in contempt violating the IAM Constitution Article L which deals with improper conduct of a member by advocating Communist ideas and incorporating these ideas with his campaign for Shop Steward."

Article L &3 of the IAM Constitution states:

"The following actions or omissions shall constitute misconduct by a member which shall warrant a reprimand, fine, suspension and/or expulsion from membership or any lesser penalty or any combination of these penalties as the evidence may warrant after written and specific charges and a full hearing as hereinafter provided:

.....

Attempting, inaugurating, or encouraging session from the IAM or advocating or encouraging or attempting to inaugurate any dual labor movement, or advocating or encouraging communism, fascism, nazism or any other totalitarian philosophy or by other actions giving support to these "philosophies" of "isms" or to movements or organizations inimical to the IAM or its established policies and laws."

A copy of the charges were sent to Turner on December 2, 1975 by the local President and on December 3, 1975 the local President sent him a letter as to the time and place of the trial to take place eight days later.

Turner was present at the trial before a Trial Committee appointed by the local President and presented evidence, called witnesses on his behalf and cross-examined witnesses testifying against him. Turner openly admits to his communist views in his articles and does not deny being a communist. On January 28, 1976 the recommendation of the Trial Committee to expel Turner was approved by the membership of Local Lodge 1894, IAM. Turner appealed to the President of the IAM and from his denial, to the Executive Council of the IAM. Turner did not appeal to the Grand Lodge convention or by referendum under IAM Constitution Article L &16 but rather commenced this action based on the LMRDA.

REASONS WRIT SHOULD BE GRANTED

1. UNIONS SHOULD BE ABLE TO ASCERTAIN WHAT PROHIBITIONS CAN BE PLACED ON MEMBERS WHO OPENLY ESPOUSE AND ARE ACTIVE IN COMMUNIST ORGANIZATIONS WITHIN THE STANDARDS OF LMRDA &411(a)(2).

The Labor-Management Reporting & Disclosure Act of 1959 (LMRDA), 29 U.S.C. &411(a)(2) which guarantees the right of freedom of speech to union members also gives the union the right to adopt and enforce reasonable rules as to the responsibility of every member toward the union as an institution and to his refraining from conduct that would interfere with the union's performance of its legal or contractual obligations. Article L&3 of the IAM Constitution prohibits

> "advocating or encouraging communism, fascisism, nazism, or any other totalitarian philosophy or by other actions giving support to these

> "philosophies" or "isms" or to movements or organizations inimical to the IAM or its established policies and laws."

The reasonableness of the IAM prohibitions can be seen in light of the activity of Turner as a member of the Progressive Labor Party (PLP). The tenants of the PLP are set forth in the PLP's official newspaper Challenge which was Exhibit B(a) at the trial which led to Turner's expulsion from the IAM. The PLP plan of achieving communist control is by infiltrating unions, by electing local shop stewards who will turn every shop into a battlefield, and by violence and illegal strikes. Turner openly exposed these views as a party activist. Obviously such philosophy is an undermining of the IAM as an institution in that it seeks to destroy the union for the sake of communist domination. Such tactics also constitute conduct which would interfere with the IAM performing its legal and contractual obligations. The IAM has to guarantee its members will abide by the terms of the contracts under which they work. The tactics of the PLP would be an unequivocal violation of all the IAM contracts and legal obligations. The tactics and philosophy of the PLP violate both areas set forth in LMRDA &411(a)(2) wherein unions are permitted to enforce reasonable rules as to members responsibility to the unions as institutions and to prevent interference with the unions performance of legal and contractual obligations.

The majority opinion did not examine the issue of whether Article L&3 was reasonable but rather just stated that it was not. There was no rationale offered or any reasoning set forth other than the conclusion. Judge Mulligan, in his concurring opinion, stated that Article L&3 was not reasonable because it was to broad, but he stated that the communist philosophy is clearly

inimical to the labor movement. In analysing the philosophy of the PLP there can be no question that such philosophy and the tactics espoused by the PLP are a threat to the IAM as an institution when advanced by any IAM member and would interfere with the legal and contractual obligations of the IAM. The Court of Appeals erred in stating that Article L&3 of the IAM constitution was not reasonable within the provisions of LMRDA &101(a)(2). The majority opinion erroneously states that the LMRDA &101 freedom of speech right is almost absolute subject to the proviso of reasonable rules regarding the union as an institution and its legal and contractual obligations. The legislative history of the LMRDA, as Judge Mulligan correctly states, was drafted specifically to allow for the exclusion of Communists from union membership. Vol. II Legislative History of the Labor Management Reporting & Disclosure Act of 1959, 1231 (3), 1233 (3), 1234 (1) (comments of Senators Aiken, Clark, Kennedy and McClellan); Atleson, A Union Member's Right of Free Speech and Assembly: Institutional Interests and Individual Rights, 51 Minn. L. Rev 403 (1967). The Second Circuit clearly affirmed the right of a union to exclude Communists or those who have engaged in subversive activity. Hurwitz v. Directors Guild of America, Inc., 364 F2d 67,73 (2nd Cir. 1966), cert. denied, 385 U.S. 971 (1966)

Both the majority opinion and the concurring opinion hold that the rule applicable to the Communist Party is not applicable to the PLP despite their identical viewpoints, tactics and philosophy. The majority opinion makes a fine distinction between the Communist Party and those who believe in the communist philosophy, the majority holding that the latter are not subject to the expulsion provisions applicable to the Communist Party. The majority cite

the Hurwitz case for the proposition that the Communist Party is a threat to the American labor movement and do not consider that the PLP is likewise. In the Hurwitz case, the Second Circuit did not restrict its holding to the Communist Party but also related it to those engaged in subversive activity thus including groups other than the Communist Party. The Court also stated at p. 76

> "An exception is made in the case of Communist beliefs because it has been established that those who harbor such beliefs have an overriding loyalty to an idealogy at odds with that of the American Labor movement and because of the great liklihood that Communists will use their influence in unions to foster illegal and undesirable activity such as the political strike...."

The reasoning used in Hurwitz is directly applicable to the PLP which states it will use the political strike to foster illegal ends. It should follow that the PLP would be subject to the same criterion as the Communist Party. The applicability of the same legal principles to groups similiar to the Communist Party was upheld in American Communications Ass'n. v. Douds, 339 U.S. 380 (1950) as to Socialist Labor Party and likewise in Dunne v. United States, 138 F2d 137(8th Cir. 1943), cert, denied, 320 U.S. 790 (1943). Judge Mulligan recognized the appropriateness of applying the same standards to the PLP as the Communist Party. Judge Mulligan states at p.420 "We assume that this congressional concern was prompted by the demonstrated ability of the Communist Party to subvert unions for revolutionary purposes which are sharply divergent from the legitimate goals of trade unionism." Judge Mulligan in

determining whether the same measure applies to both the PLP and the Communist Party, cites the critical issue to be the potential to carry out the threats of the communist philosophy. The Second Circuit in the Hurwitz case, as above cited, used the criterion of whether tactics such as the political strike were a threat to labor relations. In this case the PLP tactics are the same as those of the Communist Party, the only difference being in the name of the group involved.

The PLP should be subject to the same principles of law as the Communist Party. The Court erred in not doing so. If the same principles applied then the expulsion of Turner would not be a violation of the LMRDA and would be valid. This Court should at least send the case back to the District Court for a hearing on the potential threat of the PLP to carry out its philosophy. The language of Article L&3 is Not Overbroad So As to Violate LMRDA &101 (a)(2).

Article L&3 of the IAM Constitution was upheld by the Court of Appeals for the District of Columbia in International Association of Machinists v. Friedman, 102 U.S. App. D.C. 181 F2d 846 (D.C. Cir. 1958). Similiar language was upheld in American Communications Ass'n v. Douds, supra; Dunne v. United States, supra; Weinstock v. Ladisky, 197 Misc. 859 (N.Y. Supt. Ct. 1950); Rosen v. District Council No. 9, 198 F.Supp. 46 (S.D.N.Y. 1961). The meaning is understandable to the average member and should not be voided merely on a possibility of being too broad.

It is important for Unions to know how far they

can regulate their members in protecting their legimate interests.

2. THE EXTENT OF ACTIVITY WHICH A UNION MEMBER ENGAGES IN BEFORE HE LOSES THE PROTECTION OF LMRDA &411(a)(2) IS AN IMPORTANT FEDERAL ISSUE WHICH SHOULD BE CLEARLY DELINEATED.

Turner's activities in this case far exceeded the mere expression of ideas of the PLP. As Judge Mulligan found, "Turner is an avowed and activist member of the PLP." Turner never contradicted the statements made at his trial regarding his wanting Vice President Rockerfeller and his brothers killed in the violent overthrow of the government (64a), his approaching co-workers advocating the PLP causes both at work and riding to work (57a), his selling and distributing the PLP newspaper (61a), his maintaining an ad in the newspaper to supply PLP information (58a), his consulting with the PLP news staff on his case, his being active in leading strikes and work stoppages, most noteworthy at his employer, Varig Airlines, in 1974 (83a). All of these activities were in furtherance of the revolutionary communist philosophy of the PLP according to its blueprint for infiltration and unrest.

The charge at Local 1894 did accuse Turner of "advocating Communist ideas and incorporating those ideas with his campaign for Shop Stewar ." The charge was drawn up by co-workers who are not legal draftsmen familiar with the subtleties of law. When they testified at Turner's trial, several of these same individuals testified as to Turner's activity as outlined above. It was not just Turner's advocacy of PLP ideas that the other IAM members were complaining

of but rather his overt activity. The majority opinion ignored Turner's activity and restricted its decision to the freedom of speech issue while ignoring the uncontroverted record. The majority decision was based on form over substance by looking only to the charge and not the evidence adduced. The majority held that there is almost an absolute right of free speech for union members under LMRDA &411(a)(2) whereas Judge Mulligan's position is that speech or activity by a member of the Communist Party can be prohibited by a "properly phrased union regulation." This divergence of opinion in the Court of Appeals should be resolved by a decision of the Supreme Court so that Unions will be in a position to act properly under LMRDA &411(a)(2).

CONCLUSION

For the foregoing reasons, this petition should be granted and a writ of certiorari issued to review the decision and judgment of the Court of Appeals for the Second Circuit in this case.

Respectfully submitted,

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April 17, 1979

Appendices

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 89—August Term, 1978.

(Argued September 25, 1978 Decided December 4, 1978.)

Docket No. 78-7212

WILLIAM TURNER,

Plaintiff-Appellee,

—v.—

AIR TRANSPORT LODGE 1894 OF INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, AND INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,

Defendants-Appellants.

Before:

WATERMAN and MULLIGAN, *Circuit Judges,* and WYATT, *District Judge.**

Appeal from a judgment of the United States District Court for the Eastern District of New York (Mark A. Costantino, J.) finding the expulsion of plaintiff from his union a violation of the free speech provision of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. § 411(a)(2)).

Affirmed.

* Inzer B. Wyatt, of the Southern District of New York, sitting by designation.

KEVIN P. QUILL, Esq., Long Island City, New York, *Attorney for Defendants-Appellants.*

BURTON H. HALL, Esq., New York, New York, *Attorney for Plaintiff-Appellee.*

PER CURIAM:

This appeal by defendant labor unions calls for a decision under the "freedom of speech" provision of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. §§ 401 and following; the "LMRDA"). The "freedom of speech" provision is found in 29 U.S.C. § 411(a)(2), part of a subchapter entitled "Bill of Rights of Members of Labor Organizations." The free speech provision gives every union member "the right . . . to express any views, arguments, or opinions." This free speech right of members is almost absolute. The only limitation is that the union is given "the right . . . to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations." 29 U.S.C. § 411(a)(2).

The local union expelled plaintiff Turner because of his expression of certain views and opinions. This action was then commenced under the LMRDA, in substance to compel the reinstatement of Turner to membership in the union and for related relief.

The District Court, deciding motions by both sides and writing an explanatory opinion, granted Turner relief. This appeal by defendant unions followed.

After the appeal was argued and the record studied, we remanded (while retaining jurisdiction of the appeal) for the District Court to make more explicit its decision in a

separate judgment (Fed. R. Civ. P. 58). *Turner* v. *Air Transport Lodge 1894*, No. 78-7212, —— F.2d —— (2d Cir. October 20, 1978). Such a separate and final judgment was filed in the District Court on November 1, 1978. A motion for summary judgment in favor of Turner was granted; a motion by defendant unions for summary judgment was denied. The local union was directed to reinstate Turner to membership; related declaratory relief was granted.

The matter is now before us for disposition on the merits. We affirm the decision below.

Turner had been for some time a member of the defendant local union. A charge was made against him that he violated Article L of the union constitution in that he was "advocating Communist ideas and incorporating those ideas with his campaign for Shop Steward."

The part of the union constitution Turner was charged with violating was Article L, Section 3, which specifies certain activities by members as misconduct warranting expulsion. The following is the specified activity in the constitution on which the charge against Turner was based:

> ". . . advocating or encouraging communism, fascism, nazism, or any other totalitarian philosophy or by other actions giving support to these 'philosophies' or 'isms' or to movements or organizations inimical to the I.A.M. or its established policies and laws."

There was a hearing before a Trial Committee of the union. Both sides presented evidence. There were no real issues of fact at the union hearing. The evidence indicated that the charge against Turner arose from statements by him in the course of an election of shop stewards, he being a candidate who, among other things, asked for the sup-

port of the "rank and file" as opposed to the "union leadership".

The Trial Committee found Turner guilty of "improper conduct" within the meaning of the union constitution and recommended his expulsion. The Committee's report makes clear that its finding was based on advocacy of communism by Turner. The union membership voted him guilty and that he be expelled. The notification to Turner by the union was explicit that his "misconduct" was "advocating Communist ideas."

The free speech right guaranteed by LMRDA may not be infringed by expelling a member for advocating communist ideas. In this context, it is of no significance whether the word "Communist" be spelled with a capital "C" or with a small "c". The word, in either case, refers to the philosophy of communism.

The defendant international union in its constitution could not lawfully make it "misconduct", as it did, for a member to advocate "communism . . . or any other totalitarian philosophy, . . . ". The plain words of the LMRDA forbid such a constitutional provision. The statute pronounces a right of union members to express *"any"* opinions (emphasis supplied). This Court has ruled that the statutory right includes the making of false and libellous statements. "The Congress has decided that it is in the public interest that unions be democratically governed and toward that end that discussion should be free and untrammeled and that reprisals within the union for the expression of views should be prohibited." *Salzhandler* v. *Caputo,* 316 F.2d 445, 451 (2d Cir.), *cert. denied,* 375 U.S. 946 (1963).

The case at bar does not in any way involve the Communist Party of the United States. There was no evidence that Turner was, or ever had been, a member of the Com-

munist Party, nor that he associated with or encouraged the Communist Party. He was never accused of any such things. The only accusation was that he had been "advocating Communist ideas", that is, the philosophy of communism. There was evidence that Turner had explained his "communist views" as "a la Karl Marx, not Breshnev, Mao or Castro." The situation is thus entirely different from that in *Rosen* v. *District Council No. 9 of the Brotherhood of Painters,* 198 F. Supp. 46 (S.D.N.Y. 1961) (Levet, J.), *appeal dismissed,* 326 F.2d 400 (2d Cir. 1964), 57 L.R.R.M. 2401 (S.D.N.Y. 1964) (Tenney, J.). In those decisions, on which appellants rely, Judge Levet and Judge Tenney upheld the action of a union in disciplining a member for associating with and giving support to the Communist Party. Judge Tenney stated that "the Communist Party is not merely a political party but is a foreign conspiracy and . . . therefore, participation in, or association with, it is not within the protected area of political action." (57 L.R.R.M. at 2405). The *Rosen* decisions have never been reviewed by this Court and we need not now either approve or disapprove them. An appeal from Judge Levet's denial of a temporary injunction was dismissed because of delay in prosecuting the appeal. In so doing, this Court noted that the *Rosen* case was one "involving important questions of law" and noted that, after Judge Levet's decision, our opinion in *Salzhandler* v. *Caputo,* above cited, had been handed down (326 F.2d at 401).

There is the same distinction between the case at bar and *Hurwitz* v. *Directors Guild,* 364 F.2d 67 (2d Cir.), *cert. denied,* 385 U.S. 971 (1966). *Hurwitz* was decided as a diversity action under New York law; this Court declined to discuss the LMRDA, free speech provision or otherwise (364 F.2d at 71 n.2). *Hurwitz* did, however, deal with a non-communist oath requirement in a union constitution;

the decision was that the oath requirement was unreasonable because the form of oath was too vague. The Court in *Hurwitz* did not have occasion to distinguish, as we are doing, between the Communist party and its members on the one hand and on the other those who, like Turner, advocate the communist philosophy of Karl Marx but who are not members of the Communist party. It does appear, however, that this Court in *Hurwitz* was in fact concentrating its attention on the Communist *party* and on the dangers that *party* posed to labor unions in this country. In *Hurwitz,* this Court said:

> ". . . we think it not unreasonable to believe that the Communist *party* has in the past demonstrated that it poses a significant threat to the American labor movement. Perhaps in some unions this threat would be sufficiently met by a provision prohibiting Communists from holding union office." (364 F.2d at 74; emphasis supplied)
>
> • • •
>
> "We do not challenge the union's right to exclude or expel a person from membership if it is established that he has engaged in subversive activity or if it is established that he is a member of the Communist *party. See Rosen* v. *District Council No. 9,* 198 F. Supp. 46 (S.D.N.Y. 1961)." (364 F.2d at 76; emphasis supplied)

The free speech mandate of the LMRDA does allow a union "to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations." There is no evidence that anything Turner

did or said caused any harm to the union or interfered in any way with its contractual obligations. Presumably the appellants would claim that the provision of the union constitution under which Turner was accused was justified as one of the "reasonable rules" permitted by the LMRDA. Such a claim could not be accepted. The provision of the union constitution is in flat violation of the right of free speech in the LMRDA. It is so broad that it cannot possibly be found a reasonable means for preventing Communist *party* infiltration of the appellant unions. The provision here is broader and more vague than the non-communist oath proscribed in the *Hurwitz* case.

The judgment of the District Court is affirmed.

MULLIGAN, *Circuit Judge* (concurring):

This case presents the troublesome issue of the clash between the right of a labor organization to purge itself of those members whose activities are inimical to the legitimate goals of trade unionism and the right of the union member to express his opinions freely, without fear of reprisal. Congress grappled with the question in enacting section 101(a)(2) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 411(a)(2), which provides as follows:

> Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings:

Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

It is evident that Congress was anxious to protect the right of union members "to express any views, arguments or opinions," but at the same time it recognized the right of the union to adopt and enforce reasonable rules imposing institutional responsibility upon its members and prohibiting conduct which interfered with the union's legal or contractual obligations. See, e.g., Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 834-35 (1960) (hereinafter "Cox"); Atleson, A Union Member's Right of Free Speech and Assembly: Institutional Interests and Individual Rights, 51 Minn. L. Rev. 403, 433-34 (1967) (hereinafter "Atleson"). Unfortunately, the language employed in the statute to strike the balance is not so pellucid as a mountain lake in springtime. See Atleson, *supra,* at 432-35. On this appeal Turner claims that he was improperly expelled for expressing communist views. The union urges that the advocacy of those views was institutionally irresponsible and therefore the union constitutional provision prohibiting such advocacy was properly within the limiting proviso of section 411(a)(2). Our problem is to interpret the language of Congress which both giveth and taketh away the rights of the parties to this appeal.

The initial question is whether a union rule broadly barring a member's advocacy of totalitarian philosophies falls within the protective language of section 411(a)(2). In

resolving this issue it is crucial to note the statutory requirement that a labor organization's rules pertaining to members' responsibility toward the union be reasonable.[1] The rule at bar is Article L, section 3 of the union constitution which prohibits a member from

> . . . advocating or encouraging communism, fascism, nazism, or any other totalitarian philosophy, or by other actions giving support to these "philosophies" or "isms" or to movements or organizations inimical to the [union] or its established policies and laws.

This provision, in my view, should be construed as unreasonable within the meaning of section 411(a)(2). It prohibits advocacy of undefined philosophies and "isms" as well as unspecified actions supporting them. The provision is so broad, vague and indefinite that it provides completely inadequate guidance to union members as to just what is proscribed. See *Hurwitz* v. *Directors Guild of America,* 364 F.2d 67, 75-76 (2d Cir.), cert. denied, 385 U.S. 971 (1966). Moreover, the provision clearly goes beyond the scope of section 411(a)(2) by barring, for example, a member's participation in movements or organizations inimical to the "established policies and laws" of the union. This language can be construed to prohibit precisely what section 411(a)(2) is supposed to protect—the right of the member to freely express his opposition to union policies and laws. E.g., *Newman* v. *Local 1011, Communication Workers of America,* 570 F.2d 439, 444 (2d Cir. 1978); *Salzhandler* v. *Caputo,* 316 F.2d 445, 448-49

1 Of course, since union constitutions and rules are formulated and enforced by the union, a private entity, no federal constitutional right of free speech is here involved. E.g., Wirtz, Government by Private Groups, 13 La. L. Rev. 440, 441, 446-49 (1953); see Rothman, Legislative History of the "Bill of Rights" of Union Members, 45 Minn. L. Rev. 199, 201-02 (1960) (hereinafter "Rothman").

(2d Cir.), cert. denied, 375 U.S. 946 (1963); see *Hurwitz* v. *Directors Guild of America, supra,* at 75. Therefore, I believe the judgment below should be affirmed simply on this basis—the rule relied upon to support Turner's ouster is not "reasonable" within the mandate of section 411 (a)(2).

At the same time I would not hold that the advocacy of all views is immunized by section 411(a)(2). *Salzhandler* v. *Caputo, supra,* at 450 n.8; see *Hurwitz* v. *Directors Guild of America, supra,* at 76. That section, however infelicitous its language, permits the union to enforce reasonable rules designed to protect the union as a labor organization and to prevent interference with the performance of the union's legal or contractual obligations. Thus, while criticism of union leadership or practices or policies is fully protected, the encouragement of activities or organizations which are fundamentally inimical to trade unionism is beyond the pale. Atleson, *supra,* at 472; see Cox, *supra,* at 834-35. The distinction can be elusive and, assuming a reasonably drawn union rule, complying with the statutory distinction requires some analysis of what the member is actually advocating.

In the instant case, Turner is an avowed and activist member of the Progressive Labor Party. The goals of that party, which are presumably accurately reported in its news organ, "Challenge—The Revolutionary Communist Newspaper", include the violent overthrow of the capitalist system, the dictatorship of the proletariat, and the organization of communist led groupings in every shop to encourage "strikes and marches." The familiar communist rhetoric from the "Challenge" is set forth in the margin.[2] Signifi-

2 The following are excerpts from the "Challenge":

In order to achieve socialism, the capitalist system, the bosses and their dictatorial government must be crushed. This cannot be accomplished peacefully through elections.

cantly, Turner freely conceded his adherence to the aims of the Progressive Labor Party and testimony at the hearing established his support for and advocacy of these means and objectives. Compare *United States* v. *Brown,* 381 U.S. 437, 455-56 (1965). This encouragement of the use of union power for the primary objective of violent revolution seems clearly to me to be fundamentally inimical to the interests of the union as an institution and would certainly jeopardize its legal obligations. See *American Communications Association* v. *Douds,* 339 U.S. 382, 388-89 (1950).

Several cases in this circuit have recognized that the Communist Party, by espousing goals substantially equivalent to those mentioned above, has demonstrated that it poses a serious threat to the American labor movement.

It can only happen when the majority of the exploited unite behind communist leadership, violently overthrow the bosses, and install a new government of revolutionary workers—the dictatorship of the proletariat.

Members of the Progressive Labor Party are devoted to this goal. They dedicate their lives to actively building, promoting and organizing for the cause of revolutionary communism.

* * * * *

Unless we can organize communist-led groupings in every shop layoffs will continue. Unless we have these groupings more and more abuses will be heaped upon workers, and we will have to take it. Communist led groupings (fractions) [sic] can turn every shop into a battlefield. This will let the bosses know that they can't rely on their union goons to betray and lull workers every time they attack. Strikes and marches will be tomorrow's rule. Workers will march to war against those who oppress them. It will be the ruling class who will have to retreat and give ground to the working class.

Every campus must also be turned into a fortress against the bosses' cut backs and tuition hikes. Administration buildings must be seized and held until the cut-backs are reversed. Classes must be converted into centers of struggles against bosses' racist and anti-working class courses. Racist texts must be scrapped along with the racist teachers. Pro-boss ideas must be refuted and the schools become centers for communist organizing. On every campus we must force the administrators to bow to the just wishes of the students and honest faculty. Strikes must be organized to enforce our will.

Hurwitz v. *Directors Guild of America, supra; Rosen* v. *District Council No. 9 of the Brotherhood of Painters (Rosen II)*, 57 L.R.R.M. 2401, 2405 (S.D.N.Y. 1964) (citing several New York State court cases to the same effect); *Rosen* v. *District Council No. 9 of the Brotherhood of Painters (Rosen I)*, 198 F.Supp. 46, 49-50 (S.D.N.Y. 1961), appeal dismissed, 326 F.2d 400 (2d Cir. 1964). Moreover, the legislative history of the LMRDA compels the conclusion that an important reason for the addition of the proviso to section 411(a)(2) was so that unions would not be prevented from expelling Communists from membership.[3] See II Legislative History of the Labor-Management Reporting & Disclosure Act of 1959, 1231(3), 1233(3), 1234(1) (comments of Senators Aiken, Clark, Kennedy, and McClellan) (N.L.R.B. ed. 1959); *Hurwitz* v. *Directors Guild of America, supra,* at 74; *Rosen II, supra,* at 2405; Atleson, *supra,* at 472.

We assume that this congressional concern was prompted by the demonstrated ability of the Communist Party to subvert unions for revolutionary purposes which are sharply divergent from the legitimate goals of trade unionism. See *American Communications Association* v. *Douds, supra,* at 388-89; *Hurwitz* v. *Directors Guild of America, supra,* at 76; *Rosen II, supra,* at 2405, 2406 and cases there cited; *Rosen I, supra,* at 49-50.

Thus, if Turner had been an active member of the Communist Party and had been charged with such conduct as distributing inflammatory Party literature it seems evident that this would support his ouster under a properly phrased union regulation. However, that is not the case before us. Turner was merely charged with the expression of communist views. Moreover, Turner is not a member of the Communist Party, which has a demonstrated record of successful infiltration and subversion of trade unions. He is a member of the Progressive Labor Party and the record is barren of any indication of its size, influence or potential to accomplish its revolutionary goals. No matter how offensive Turner's views may be, his mere expression of them, as far as the record before us is concerned, presents no real or serious threat to the integrity of the labor organization or to its ability to perform its legal and contractual obligations. See *Hurwitz* v. *Directors Guild of America, supra,* at 76; Atleson, *supra,* at 457.

For these reasons I vote to affirm.

3 For analyses of the congressional compromise that led to the insertion of the proviso into section 411(a)(2), see Cox, *supra;* Rothman, *supra.*

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

WILLIAM TURNER,

Plaintiff,

-against-

AIR TRANSPORT LODGE 1894 of INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,

Defendants.

----------X

77 C 1146

FINAL JUDGMENT

COSTANTINO, D.J.

This case comes before the court after it was remanded by the Court of Appeals with the directive that this court make and enter a final judgment pursuant to Fed. R. Civ. P. 58. The following constitutes the court's final judgment.

The court grants summary judgment to the plaintiff,[1/] finding that his expulsion from defendant Air Transport Lodge 1894, unduly infringed upon

his right to free speech protected by §101(a)(2) of the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. §411(a)(2).

That portion of Article L, §3 of the constitution of the defendant International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM") that makes punishable

> advocating or encouraging communism, facism, nazism, or any other totalitarian philosophy, or by other actions giving support to these "philosophies" or "isms" or to movements or organizations inimical to the I.A.M. or its established policies and laws

is declared void pursuant to §101(b) of LMRDA, 29 U.S.C. §411(b), because it is vague and overbroad and inconsistent with plaintiff's right to free speech protected by §101(a)(2) of LMRDA.

Because plaintiff was expelled from Air Transport Lodge 1894 for advocating communist

ideas in violation of the above quoted language from Article L, §3 of the IAM constitution, his expulsion was improper. Section 101(a)(2) of LMRDA prohibits the defendants from expelling union members for merely advocating communist ideas absent a showing that the expression of such beliefs posed a threat to Air Transport Lodge 1894 or to IAM as institutions.

Air Transport Lodge 1894 is directed to reinstate plaintiff with all union benefits to which he was entitled prior to his expulsion. If the Trial Committee of Lodge 1894 should attempt to retry plaintiff for advocating communist ideas, it must show that such conduct was inimical to the union's interests.[2/] No such evidence was proffered at the December 11, 1975 union disciplinary hearing.

To the extent that plaintiff seeks a permanent injunction against enforcing his

expulsion, his request is denied. The court cannot say that Air Transport Lodge 1894, in a future proceeding, will not be able to establish that plaintiff's advocacy of communist ideas posed a threat to the local or international union.

Plaintiff's request for attorney's fees is denied.

Defendant's motion for summary judgment is denied.

The foregoing constitutes the court's final judgment. The Clerk of the Court is directed to enter the judgment accordingly.

So ordered.

/s/ MARK A. COSTANTINO

U. S. D. J.

F O O T N O T E S

1/ On the basis of the pleadings and the matters outside the pleadings submitted as part of defendants' motion for summary judgment, the court finds that there are no material facts in dispute and that plaintiff is entitled to summary judgment.

2/ The court notes that the question of legality of that portion of Article L, §3 of the IAM constitution that makes punishable

> Attempting, inaugurating, or encouraging secession from the I.A.M., or advocating or encouraging secession from the I.A.M., or advocating or encouraging or attempting to inaugurate any dual labor movement...

is not before the court at this time.

Appendix C

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 89—August Term, 1978.

(Argued September 25, 1978 Decided October 20, 1978.)

Docket No. 78-7212

WILLIAM TURNER,

Plaintiff-Appellee,

—v.—

AIR TRANSPORT LODGE 1894 OF INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, AND INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,

Defendants-Appellants.

Before:

WATERMAN and MULLIGAN, *Circuit Judges*
and WYATT, *District Judge.**

Appeal from an order of the United States District Court for the Eastern District of New York (Mark A. Costantino, J.).

Remand for making and entering a judgment.

* Inzer B. Wyatt, of the Southern District of New York, sitting by designation.

KEVIN P. QUILL, Esq., Long Island City, New York, *Attorney for Defendants-Appellants.*

BURTON H. HALL, Esq., New York, New York, *Attorney for Plaintiff-Appellee.*

PER CURIAM:

This is an appeal by defendant unions "from the memorandum order entered in this action on March 31, 1978." The quotation is from the notice of appeal, which describes that order as having "directed reinstatement [of plaintiff] to union membership and which declared Article L §3 of the International Association of Machinists & Aerospace Workers Constitution void."

Plaintiff Turner was a member of defendant Air Transport Lodge 1894 (the "Local union") which was affiliated with defendant International Association of Machinists and Aerospace Workers (the "International union"). He was expelled from the Local union on January 28, 1976.

This action was commenced in the United States District Court for the Eastern District of New York. It was brought under the Labor Management Reporting and Disclosure Act of 1959 (29 U.S.C. §§ 401 and following; "LMRDA"). The relief prayed for was: (a) a permanent injunction against enforcing the expulsion of Turner, (b) a declaratory judgment that the expulsion of Turner is void, (c) a permanent injunction against infringement by defendants of the rights of Turner under LMRDA, (d) a declaratory judgment that Article L §3 of the constitution of the International union is void to the extent specified, and (e) for attorney's fees, etc.

After answer, plaintiff moved for entry of judgment for the relief demanded in the complaint. The motion was

said to be under Fed. R. Civ. P. 12(c), "judgment on the pleadings."

Defendants then moved for summary judgment.

The two motions were heard by Judge Costantino, who on March 31, 1978 filed the "memorandum and order" from which this appeal is taken.

We have an initial difficulty with this appeal because we cannot tell from the record precisely what was the decision below. The terms of the decision have never been spelled out in a judgment nor is there a "separate document" containing a "judgment", as required by Fed. R. Civ. P. 58.

We recognize that the separate document requirement of Rule 58 can be waived and that absence of a judgment set forth in a separate document does not deprive this Court of jurisdiction of this appeal. *Bankers Trust Co.* v. *Mallis,* —— U.S. ——, 98 S. Ct. 1117 (March 28, 1978). Until the Supreme Court thus recently spoke, most of the courts of appeals (differing with this Court) had concluded that a judgment on a separate document was a prerequisite to appellate jurisdiction. The decisions are cited in the Supreme Court's opinion (98 S. Ct. at 1119 n.2).

While the separate document requirement may now be waived, we would not encourage the practice. We suggest that, where the District Court makes a decision intended to be "final" (28 U.S.C. § 1291), the better procedure is to set forth the decision in a separate document called a judgment (Fed. R. Civ. P. 58).

In the case at bar, we assume that the order of March 31, 1978, was intended to be a "final decision", but we cannot be sure.

In any event, we believe that the questions raised by this appeal can be more fully considered if the decision

below is made explicit in a judgment. We assume that the District Court meant to grant the motion of plaintiff for judgment on the pleadings and to deny the motion of defendants for summary judgment, but this is nowhere stated. There is a direction in the nature of a mandatory injunction that "defendant" (by which the Local union must be intended) "reinstate" Turner. Nothing is said about any further injunctive relief; it may be that the District Court meant to deny any further such relief. The opinion refers to "that part" of the constitution of the International union which "served as the basis for plaintiff's expulsion from the union"; this "part", it is said, "must be declared void because it is vague and overbroad." The "part" of the constitution affected is not described with particularity, nor is it clear whether all other relief by way of declaratory judgment is to be denied.

Accordingly, we remand the action to the District Court for the prompt entry of a judgment embodying the decision of the two motions, containing the terms of the injunction granted, and declaring the rights and other legal relations of the parties to the extent such relief is granted. We direct that, after the judgment has been made and entered, the record on appeal, with the addition of the judgment, be promptly returned to this Court. We retain jurisdiction of the appeal for its disposition upon the return of the record. The mandate shall issue forthwith.

Appendix D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

WILLIAM TURNER,

Plaintiff,

77-C-1146

v.

MEMORANDUM and ORDER

AIR TRANSPORT LODGE 1894 of INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,

Defendants.

----------x

Appearances:

For Plaintiff: K. Randlett Walster, of Rabinowitz, Boudin & Standard, 30 East 42nd Street, New York City 10017, and Robert H. Hall, 401 Broadway, New York City 10013

For Defendants: Kevin P. Quill, 29-27 41st Avenue, Long Island City, New York 11101

COSTANTINO, D.J.

This matter comes before the court on plaintiff's motion for judgment on the pleadings and defendant's cross-motion for summary judgment. The facts of the case, which are not in dispute,

are as follows. Plaintiff, William Turner, joined defendant Air Transport Lodge 1894 of International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM") in 1971. In December 1974 he was elected shop steward representing cargo agents at Varig Airlines at John F. Kennedy International Airport. In November and December 1975 he was nominated for reelection to that post and campaigned for it. In the course of that campaign, Turner stated his communist views to fellow union members.

In November 1975 several members of Lodge 1894 filed charges against Turner as follows:

> We the members of IAM Local 1894 and employees of Varig Brazilian Airlines do hereby wish to bring to the attention of the Union that one of our fellow members (William Turner) is openly and in contempt [sic] violating the IAM Constitution Article L which deals with improper conduct of a member by advocating Communist ideas and incorporated these ideas with his campaign for Shop Steward.

Article L, § 3 of the IAM constituion reads:

> The following actions or omissions shall constitute misconduct by a member which shall warrant a reprimand, fine, suspension and/or expulsion from membership or any lesser penalty or any combination of these penalties as the evidence may warrant after written and specific charges and a full hearing as hereinafter provided:
>
> . . .
>
> Attempting, inaugurating, or encouraging secession from the I.A.M., or advocating or encouraging or attempting to inaugurate any dual labor movement, or advocating or encouraging communism, facism, nazism, or any other totalitarian philosophy, or by other actions giving support to these "philosophies" or "isms" or to movements or organizations inimical to the I.A.M. or its established policies and laws.

On December 11, 1975 Turner was tried before a Trial Committee of Lodge 1894. On January 28, 1976 the Trial Committee found Turner guilty of violating the IAM constitution by advocating communist ideas and recommended that he be expelled. The findings and recommendations of the Trial Committee were approved at a membership meeting of Lodge 1894 and Turner was expelled from the union. He appealed his expulsion to the president of the IAM and,

from the president's denial of his appeal, to the Executive Council of the IAM. The Executive Council also denied his appeal. He then brought this action alleging that the union violated his rights secured by § 101(a)(2) of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. § 411(a)(2).

§ 101(a)(2) of LMRDA provides in pertinent part:

> Every member of any labor organization shall have the right to. . .express any views, arguments, or opinions:. . .Provided, that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

§ 101(b) of LMRDA provides that "Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect."

Plaintiff argues that the portion of the IAM's constitution that prohibits advocating, encouraging, or supporting communism, facism, nazism or any other totalitarian philosophy is inconsistent with his guaranteed right to free speech and therefore must be declared void, and that he is entitled to be reinstated in the IAM.

Defendant first argues that plaintiff lacks standing to bring this suit. It asserts that the facts in this case revolve around the election for shop steward and that the right to sue in matters pertaining to elections rests entirely with the Secretary of Labor pursuant to § 402 of LMRDA, 29 U.S.C. § 482. The argument is without merit. "When rights of free speech and of association - as opposed to the rights of voting and election - of union members are invaded by the actions of union officers, the requirement of initial appeal to the Secretary [of Labor] under Title IV is

inapplicable." Schonfeld v. Penza, 477 F.2d 899, 903 (2d Cir. 1973). Here plaintiff was expelled from the IAM for advocating communist ideas. Although these ideas were allegedly incorporated with plaintiff's campaign for shop steward, nothing in his complaint can be read to allege an infringement of voting or election rights. Since plaintiff's cause of action clearly raises issues concerning his right to free speech, he has standing to bring such an action in this court.

Defendant also contends that plaintiff's complaint must be dismissed because he has failed to exhaust his union remedies in violation of the IAM constitution. Article L, § 16 of that document provides for appeal from a decision of the Executive Council to the Grand Lodge convention or, by referendum, to the IAM membership at large. Plaintiff failed to make such an appeal. However, plaintiff alleged in his

complaint, and defendant did not dispute in its answer, that he pursued his internal union remedies for a period of more than four months. § 101(a)(4) of LMRDA provides "an outside limit beyond which the judiciary cannot extend the requirement of exhaustion - no remedy which would require proceedings exceeding four months in duration may be demanded." Detroy v. American Guild of Variety Artists, 286 F.2d 75, 78 (2d Cir.), cert. denied, 366 U.S. 929 (1961). Thus plaintiff has satisfied the statutory exhaustion requirement.

Proceeding now to the substantive aspect of plaintiff's claim, the court must determine whether the portion of the IAM's constitution that prohibits advocating, encouraging, or supporting communism, facism, nazism or any other totalitarian philosophy should be declared void because it is inconsistent with the free speech provision of LMRDA. The court

finds that the provision of the union constitution in issue unduly infringes upon plaintiff's right to free speech protected by § 101 (a)(2) of LMRDA and that it therefore must be declared void.

It has been stated that the free speech provision of LMRDA is a codification of some of our most basic liberties and that the substantive rights conferred by that section should be broadly construed. Airline Maintenance Lodge 702 v. Loudermilk, 444 F.2d 719, 723 (5th Cir. 1971) (Bell, J.). A union member has the statutory right "to express any view, arguments, or opinions" subject to three recognized limitations: the union may establish "(1) reasonable rules pertaining to the conduct of meetings; (2) reasonable rules as to the responsibility of every member toward the union as an institution; and (3) reasonable rules requiring members to refrain from conduct

interfering with the union's performance of its legal or contractual obligations." Id. at 721-22. See also Salzhandler v. Caputo, 316 F.2d 445, 450 (2d Cir.), cert. denied, 375 U.S. 946 (1963). Of these three limitations on the union member's right of free expression, only the second could arguably apply to the facts of this case.[1]/ It is possible that a union rule prohibiting the advocacy of communist ideas would not be inconsistent with § 101(a)(2) of LMRDA if the rule was written so as to prohibit the kind of advocacy that threatened the union as an institution. Indeed, in Hurwitz v. Directors Guild of America, Inc., 364 F.2d 67 (2d Cir.), cert. denied, 385 U.S. 971 (1966), the Court of Appeals for the Second Circuit stated that labor unions could take reasonable steps to guard against communist infiltration because "the Communist party has in the past demonstrated that it poses a significant threat to the American labor movement." Id. at 74.

Notwithstanding the above-quoted language from Hurwitz, the court there struck down the union's constitutional requirement that its members sign a non-communist oath or face expulsion. The court held that while loyalty oaths are not per se unreasonable, the oath before it was vague and overbroad.[2] The court found three dangers inherent in the oath. First, it was offensive to non-communist labor leaders, since it could conceivably cover them as well as communists. Secondly, because of its vagueness the oath was a potential weapon for punishing those members who differ politically from the union's majority or who challenge the union's leadership. Thirdly, and most important, the vagueness of the oath made it impossible for signers to know exactly what they were forbidden to do. Id. at 75.

The dangers recognized in Hurwitz are also present in this case with respect to the provision of defendant's constitution being

challenged by plaintiff.[3] The provision forbids union members from advocating, encouraging, "or by other actions giving support to" communism, facism, nazism "or to movements or organizations inimical to the I.A.M. or its established policies or laws." Such broad language prohibits an unreasonably wide range of political activities and goes far beyond furthering the defendant's legitimate concern in protecting itself as an institution. It makes it quite difficult for union members to know that they are forbidden to do and "discourages them from joining political and other associations and from espousing controversial political positions." Hurwitz v. Directors Guild of America, Inc., supra at 75.

The instant case shows the extent to which the defendant's constitution can be used to punish union members for engaging in political activity that poses no threat to the defendant. In the course of his campaign for shop steward

plaintiff passed out two leaflets wherein he stated that he was a member of the Progressive Labor Party and had communist views.[4] In addition, he occasionally expressed his communist beliefs in the course of informal discussions with coworkers. At no time, however, did he say or do anything that could be considered harmful to the union. In essence, plaintiff was expelled for expressing controversial, unpopular views. LMRDA § 101(a)(2) was enacted to prohibit precisely this type of restraint of expression.

Even assuming that a union may expel one of its members because he is a member of the Communist Party, see Rosen v. District Council No. 9, 198 F. Supp. 46 (S.D.N.Y. 1961) and cases cited therein, when a union chooses to expel a person because of communist beliefs rather than for objective harmful conduct, those beliefs must seriously threaten the union's interests in order to justify the

expulsion. Hurwitz v. Directors Guild of America, Inc., supra at 76. Cf. Strachan v. Weber, 535 F.2d 1202 (9th Cir. 1976) (union requirement that members salute flag and join in pledge of allegiance at meetings held void because there was no showing that union as labor organization would be seriously harmed by plaintiff's failure to participate in such activities). Since neither plaintiff's beliefs nor his expression of those beliefs posed a serious threat to the IAM as an institution, his expulsion was improper.

In conclusion, that part of the IAM constitution, as herein discussed, that served as the basis for plaintiff's expulsion from the union must be declared void because it is vague and overbroad. Moreover, plaintiff's expulsion from the IAM for advocating communist ideas was improper because there was no showing that his conduct posed a serious threat to the defendant's existence as a labor

organization. The court's opinion does not constitute an adoption of plaintiff's views. Rather, it is an affirmation of the principle that the rights of an individual must be protected regardless of the unpopularity of his views.

The defendant is directed to reinstate plaintiff immediately, with all benefits to which he was entitled prior to the time of his expulsion. So ordered.

/s/ MARK A. COSTANTINO
U. S. D. J.

FOOTNOTES

1/
Defendant makes no claim that plaintiff's views had any disruptive effect on union meetings or that they interfered with the union's performance of its legal or contractual obligations.

2/
The oath read:

> I am not a member of the Communist Party or affiliated with such party, and I do not believe in, and I am not a member [sic] nor do I support any organization that believes in or teaches the overthrow of the United States government by force or by any illegal or unconstitutional methods.

3/
If anything, the IAM's constitutional provision in issue here is far broader and more vague in what it forbids than was the oath struck down in Hurwitz.

4/
The leaflets that the plaintiff passed out read as follows:

> SHOP STEWARD ELECTIONS FOR 1976 - The way I see it - Bill Turner
>
> RUNNING FOR SHOP STEWARD IS A POLITICAL ACT! YOU CAN'T BE NEUTRAL. The honest,

serious candidate has to choose sides. The shop steward represents the workers at all times, not management. We have to be sure that in negotiations our demands are being heard. The candidate who sees being shop steward as a stepping-stone to his personal success with the company, CANNOT BE TRUSTED , and should not receive even one vote from us.

In 1971, when I started working at Varig, the union and the company seemed to be the same. Cargo Supervisors, ("an extension of management functions-Article IV, Sect. a, of our contract), were also the SHOP STEWARDS over the cargo department. In large measure, my efforts helped to change this picture. Now, Cargo Agents represent other Cargo Agents, etc.

Most of you know of my communist views, that the working-class should own and control all of society; that everyone becomes a producer, (not a welfare state); and that all production would be to fill the needs of all the people, (not for profit). My membership in the Progressive Labor Party, a working-class, revolutionary party, has taught me many valuable lessons about fighting for workers' rights. We learn from one another. Progressive Labor Party (PLP) members and friends are active shop stewards and local-union officers, in many unions, throughout the country.

During my year as shop steward, and long before I was shop steward, I helped make the union stronger, here at Varig. In spite of my advise, [sic] not to tie in the insurance plan with the rest of

the contract, the overwhelming majority voted for it. Anyway, we did receive a pretty good wage package, while we still have a fight ahead of us for a better insurance and pension plan. Throughout the year, I have been on the job as shop steward (not just during working-hours). I have discussed with you, advised you, appeared before management with you, processed your grievances and mine, and attended the meetings required of a shop steward, so that Varig workers have a voice in our union.

At my inniative, [sic] but together, we won weekly pay, upgraded the dental plan, won a safety committee, got adequate lighting in the warehouse, established union rights in the purchasing department, and won more respect by management, of us as union members. Now, we can go on and formulate the demands for the next contract which were cut short in the last negotiations. A WINNING TEAM NEEDS STRONG LEADERSHIP - VOTE WISELY----

* * *

More on Shop Steward Elections - DOES YOUR CHOICE COUNT? - Bill Turner

Obviously, your choice does count, and will count even more in the future. The Union Leaders told Tobon not to let me win. So, when you gave me a majority vote, - suddently - the Union By-Laws came to life. Presto, Change-o, we have a December election.

WHY DOES THE UNION LEADERSHIP WANT ME OUT AS SHOP STEWARD? Because I fight back; I

give leadership; and I belong to Progressive Labor Party. They know that part of the P.L.P. program, is for rank-and-file, union members to control their own union, and to do this, to build strong caucuses to gain control. They know that we don't compromise or allow a union sell-out. THIS IS WHAT THEY ARE AFRAID OF!

I probably will get attacked on the floor of the union meeting, this Wednesday, for expressing my views. A strong turnout at the meeting, of Varig workers, demanding my right to speak out, can turn this attack around.

We don't want union leaders in our industry to be able to throw away our pensions or benefits, as they are doing in the New York City workers' unions. That means that members have to be active and to know what's going on.

ARE MY COMMUNIST IDEAS, "ANTI-AMERICAN"? No, my communist ideas don't put me on the side of Russia, or China, or Cuba! The working-class in the so-called "socialist" countries have very little to say. These countries have a capitalist system just like in the United States. The only difference is that in those countries, all the wealth and production-machinery is owned by the government, which is controlled by a ruling-class of high-living "party" leaders, military leaders, and highly-skilled technicians. Here, in the U.S., the financial-industrialist dictatorship over the country is a little more hidden.

MY SIDE IS THE WORKERS' SIDE! So long as Capital property is privately owned,

here, or in any part of the world, the workers, who produce all goods and services for society, will get back only a small part of the value of their work. The major part of labor value is ROBBED from us. The ultimate change that I want to see, is for the WORKERS to own and control ALL PROPERTY, capital, or otherwise! Then, with the bosses out of the way, we can begin to enjoy and share all the things in life which our brains and hands create.

RIGHT HERE, AND NOW, OUR FIGHT IS TO KEEP AS MUCH OF WHAT WE PRODUCE, FOR OURSELVES AND FOR OUR FAMILIES! This means, keeping wages high - not losing to inflation. This means improving our benefits - NOTHING IS TOO GOOD FOR US!

Your vote for me on December 8th, 9th and 10th, will allow me to continue to represent you and to serve you as shop steward.

(signed) Bill Turner

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Appendix E

UNITED STATES COURT OF APPEALS
Second Circuit

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-second day of January, One thousand nine hundred and seventy-nine.

- x

WILLIAM TURNER,

Plaintiff-Appellee,

vs.

AIR TRANSPORT LODGE 1894 of INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO, and INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO.

Defendants-Appellants.

Docket No. 78-7212

- x

A petition for rehearing containing a suggestion that the action be reheard en banc having been filed herein by counsel for the defendants-appellants, and no active judge or judge who was a member of the panel having requested that a vote be taken on said suggestion ,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied.

IRVING R. KAUFMAN,
Chief Judge

Appendix F

Exhibit A - Minutes of Trial of Plaintiff [Excerpts]

- x

In the Matter of the Trial Hearing of :

THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS :

and :

MEMBERS OF LODGE 1894, VARIG-BRAZILIAN AIRLINES: RUDOLF BAILEY, AR94332; ALUIZIO BASTOS, AX93930; JOSE A. CULLARI, AW17182; COLLEEN DE POOLA, AX93411; RICHARD G. DI DEA, RR78648; CRISTINA DORNEY, AW17153; MARIE EISENRAICH, AC25827; ALFRED GOTT, AX93598; EMMA GIORDANO, AX93408; HECTOR GRONROS, AX93476; VIRGINIA JERNAKIAN, AW16853; WARREN LERNER, AX93654; ARTHUR J. LOMANDO, AR94037; EUGENE R. LONDA, AW16963; MAGDALENA LOPEZ, AX93409; VICTOR MATOS, AX94003; KENNETH METTY, AW65072; KARL L. MOLINARO, AW65213; HENRY F. MEYERS, AW79842; HELEN PICARDI, AW16856; JOSEPH POPOLIZIO, AX93895; SALLY PRAUGHT, AX94048; ORLANDO RAMIREZ, AX93948; THORWARD SCOTT, AD908; MOISES TALENTINO, AX93952; RONALD J. WOOD, AW65377; WILLIAM J. ZERILLO, AR93775, :

Plaintiffs, :

-against- :

WILLIAM TURNER, AW16975, :

Defendant. :

- x

TRIAL HEARING in the above-captioned action, held on the 11th day of December, 1975, at 6:10 P.M., at the Holiday Inn, 175-15 Rockaway Boulevard, Jamaica, New York, pursuant to Notice of Hearing dated December 3, 1975, and before Myrna Shore, a Notary Public of the State of New York.

* * * * *

by the members of Varig-Brazilian Airlines, Local Lodge 1894.

"We, the members of IAM Local 1894 and employees of Varig-Brazilian Airlines, do hereby wish to bring to the attention of the union that one of our fellow members (William Turner) is openly and in contempt violating the IAM Constitution, Article L, which deals with improper conduct of a member by advocating communist ideas and incorporating these ideas with his campaign for shop steward."

Brother William Turner, how do you plead to it, guilty or not guilty?

MR. TURNER: Not guilty.

THE CHAIRMAN: Let the record show the defendant, William Turner, has pleaded not guilty.

The plaintiff, Brother Jorge Tobon, shall now present his case.

MR. TOBON: As attorney for the plaintiffs, I would like to admit a piece of evidence that would be backed up by testimony of the plaintiffs as witnesses, and I would submit this to the Trial Committee as Plaintiffs' Exhibit 1. Here are copies for the members of the Committee.

THE CHAIRMAN: All right.

(Document entitled "Shop Steward Elections for 1976" was marked and received as Plaintiffs' Exhibit 1 in evidence.)

MR. TOBON: Exhibit 1 reads, "Shop Steward Elections for 1976 - the way I see it - Bill Turner. Running for shop steward is a political act. You can't be neutral. The honest, serious candidate has to choose sides. The shop steward represents the workers at all times, not management. We have to be sure that in negotations our demands are being heard. The candidate who sees being shop steward as a stepping stone to his personal success with the company cannot be trusted, and should not receive even one vote from us.

"In 1971 when I started working at Varig, the union and the company seemed to be the same. Cargo supervisors (an extension of management functions - Article IV, Section a, of our contract) were also the shop stewards over the Cargo Department. In large measure, my efforts helped to change this picture. Now cargo agents represent other cargo agents, etc.

"Most of you know of my communist views, that the working class should own and control all of society, that everyone becomes a producer (not a

welfare state) and that all production would be to fill the needs of all the people (not for profit). My membership in the Progressive Labor Party, a working class, revolutionary party, has taught me many valuable lessons about fighting for workers' rights. We learn from one another. Progressive Labor Party (P.L.P.) members and friends are active shop stewards and local union officers in many unions throughout the country.

"During my year as shop steward, and long before I was shop steward, I helped make the union stronger here at Varig. In spite of my advice, not to tie in the insurance plan with the rest of the contract, the overwhelming majority voted for it. Anyway, we did receive a pretty good wage package, while we still have a fight ahead of us for a better insurance and pension plan. Throughout the year I have been on the job as shop steward (not just during working hours). I have discussed with you, advised you, appeared before management with you, processed your grievances and mine, and attended the meetings required of a shop steward so that Varig workers have a voice in our union.

"At my initiative, but together, we won weekly

* * * * *

THE CHAIRMAN: Proceed.

MR. TOBON: This document appeared on our bulletin boards approximately sometime in late November. It reads as follows --

MR. CLARKE: Excuse me. Is this Exhibit 2?

MR. TOBON: Yes, this was submitted as Exhibit 2.

"More on Shop Steward Elections - Does your choice count? - Bill Turner. Obviously, your choice does count, and will count even more in the future. The union leaders told Tobon not to let me win. So, when you gave me a majority vote, suddenly the union by-laws came to life. Presto, change-o, we have a December election.

"Why does the union leadership want me out as shop steward? Because I fight back, I give leadership, and I belong to Progessive Labor Party. They know that part of the P.L.P. program is for rank and file union members to control their own unions, and to do this, to build strong caucuses to gain control. They know that we don't compromise or allow a union sell-out. This is what they are afraid of.

"I probably will get attacked on the floor of the union meeting this Wednesday for expressing my views. A strong turnout at the meeting of Varig

workers, demanding my right to speak out, can turn this attack around.

"We don't want union leaders in our industry to be able to throw away our pensions or benefits, as they are doing in the New York City workers' unions. That means that members have to be active and to know what's going on.

"Are my communist ideas anti-American? No, my communist ideas don't put me on the side of Russia or China or Cuba. The working class in the so-called socialist countries have very little to say. These countries have a capitalist system just like in the United States. The only difference is that in those countries all the wealth and production machinery is owned by the government, which is controlled by a ruling class of high-living party leaders, military leaders and highly skilled technicians. Here, in the U.S., the financial industrialist dictatorship over the country is a little more hidden.

"My side is the workers' side. So long as capital property is privately owned here, or in any part of the world, the workers, who produce all goods and services for society, will get back only a small part of the value of their work. The major

part of labor value is robbed from us. The ultimate change that I want to see is for the workers to own and control all property, capital or otherwise. Then, with the bosses out of the way, we can begin to enjoy and share all the things in life which our brains and our hands create.

"Right here and now our fight is to keep as much of what we produce for ourselves and for our families. This means keeping wages high, not losing to inflation. This means improving our benefits. Nothing is too good for us.

"Your vote for me on December 8th, 9th and 10th will allow me to continue to represent you and to serve you as shop steward."

It is signed "Bill Turner."

At this time I would like to call to the stand Mr. Henry Meyers.

(Witness Kenneth Metty excused.)

H E N R Y F. M E Y E R S, called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TOBON:

Q Will you state your full name and address for

* * * * *

MR. TURNER: Yes.

THE CHAIRMAN: Just to procedurally go the right way, I would suggest, or I would require, that if you present any evidence along with 1 and 2, that a copy go to the defendant, Bill Turner. Now, if you have a copy of 1 and 2, I would like you to give him a copy of each, as well as anything else you submit.

MR. TOBON: All right.

I have no further questions of the witness. You may cross-examine.

THE CHAIRMAN: Do you have any cross-examination?

MR. TURNER: No, it's not necessary. Thank you.

MR. TOBON: Now, I have a group of documents, newspapers. I'd like to place the first one in as Exhibit 3.

The paper is titled "Challenge, the Revolutionary Communist Newspaper; Progressive Labor Party." This particular issue is dated December 4, 1975, Volume 12, No. 27.

I'd like to read an article from this newspaper, which is located on page 7. It's the top paragraph. "NYC Varig Airlines PLer elected steward; union sell-outs void elections. New York City - workers at Varig-Brazilian Airlines re-elected PLPer Bill Turner.

running as a communist for shop steward at the company's Kennedy Airport freight facility. Since the right wing's all-out campaign against Turner failed, the union (International Association of Machinists)" -- there's a mistake here; it says, in the parentheses, "Lodge 1095." It should be --

THE CHAIRMAN: Just read what the article says.

MR. TOBON: -- "is voiding this election and organizing another attempt to defeat him.

"As a cargo agent for nearly five years at JFK, Turner has participated in and led a work action at Varig (in '73) and organized support for strikes of other airline workers over the years. He has a reputation for fighting for every grievance on the platform, but this year a new ingredient was added.

"While previously Turner's co-workers knew him as a militant trade unionist with revolutionary ideas, during this election Turner distributed a leaflet explaining his membership in P.L.P. and how his communist ideas - especially that workers produce everything of value and therefore are entitled to all the fruits of their labor - have enabled him to be a better shop steward and fighter for workers' rights with a non-compromise policy against the bosses."

At this time can I bring to the Committee's attention the fact that the leaflet being discussed in this article is, in fact, Exhibit No. 1.

To continue with the article, "The right wing, including the chief shop steward and his union superiors, went bananas. One fascist called for his blood. One of his opponents for the steward's post ran to the FBI, only to find out there was nothing they could do about it. (Then this character started a petition complaining about the introduction of communist ideas into the election campaign.) The chief steward asked the local president and general chairman of the district for advice, and was told to make sure every worker in the department saw the leaflet (which helped Turner greatly). The chief steward spent all his working hours campaigning against him and warned Turner that he would never let him continue as steward.

"The rank-and-file's reaction was just the opposite. Workers congratulated Turner for taking his stand. He got calls from other departments offering support. For several days debates about communist ideas raged up and down the Varig Cargo Department. Turner answered every anti-communist trick and carried the

fight right back to the redbaiters. The workers knew him as a fighter on the job over the years and now were beginning to understand the source of the ideas that led those fights.

"The anti-communists failed. Turner was re-elected, getting 25 votes to 23 each for the next two candidates (two stewards' positions were being filled).

"The chief steward was taken aback. Although Turner had pointed out to him before the election that the union Constitution calls for the nominations to take place in November and the election in December, the chief steward ignored this and said the election should proceed in November, shortening the campaign (otherwise he never expected Turner to beat the anti-communism). Now he turned around and voided the election, saying it had to be run over again in December.

"This flunky intends to also challenge Turner's membership in the union, using the IAM's fascist anti-communist clause as his weapon. Turner and his close co-workers now must mobilize the whole department and other supporters into the broader local to pack the union meeting, stop this attack on their

militant steward, and prevent any expulsion. The loss of a communist shop steward would cost the workers dearly. Now is the time to fight like hell."

THE CHAIRMAN: Are you going to present the Trial Committee with a copy of that?

MR. TOBON: Yes, I will, and Mr. Turner also.

THE CHAIRMAN: The original for the Chairman and copies for the members?

MR. TOBON: Yes.

(Newspaper, "Challenge," dated December 4, 1975, was marked and received in evidence as Plaintiffs' Exhibit 3.)

MR. TOBON: In addition to this piece of evidence, I'd like to offer these other copies of "Challenge, the Revolutionary Communist Newspaper," and would also like to bring to the attention of the Committee certain elements of this newspaper that have brought me to believe that this is certainly a communist newspaper and certainly advocates certain violence and things that should be incorporated into the trial.

With the Committee's permission, I'll read the Progressive Labor Party's motto, I suppose it would be. This is what the Progressive Labor Party stands for as they print it in the newspaper. This is read

from the December 18th issue, which is right here.

It reads, "The Progressive Labor Party Fights for Socialism. Socialism means liberation for the entire working class, the destruction of the bosses, a society of abundance and full employment, an end to exploitation, a secure and creative future for all workers, and an end to the racism, fascism and wars that are all products of capitalism.

"In order to achieve socialism, the capitalist system, the bosses and their dictatorial government must be crushed. This cannot be accomplished peacefully through elections.

"It can only happen when the majority of the exploited unite behind communist leadership, violently overthrow the bosses, and install a new government of revolutionary workers - the dictatorship of the proletariat.

[* "Members of the Progressive Labor Party are devoted to this goal. They dedicate their lives to actively building, promoting and organizing for the cause of revolutionary communism.]

"The Progressive Labor Party and its newspaper, Challenge, are dedicated to the U.S. working class and the working class of the entire world - black,

* * * * *

"Challenge" was marked and received as Plaintiffs' Exhibit 5 in evidence.)

MR. TOBON: At this time I would like to recall Mr. Kenneth Metty to the stand, please.

(Witness Henry Meyers excused.)

K E N N E T H M E T T Y, recalled as a witness on behalf of the plaintiffs, having been previously duly sworn, was examined and testified further as follows:

THE CHAIRMAN: I'd like to remind you now that you are still under oath.

THE WITNESS: Yes.

DIRECT EXAMINATION (continued)

BY MR. TOBON:

Q Mr. Metty, did Mr. Turner ever advocate or encourage communism or any related labor movement to you?

A Yes, he did.

Q Which labor movement in particular?

A The Progressive Labor Party.

Q Where did he make these comments or advocations?

A At work and in the car pool.

Q Can you tell me approximately when, and as many times as it did happen?

A Riding back and forth to work in the car pool we have had quite a few discussions about his ideas and

what my ideas were. This happened over the past eight, nine months that I have been in the car pool with him.

Q Did he ever tell you he was a member of the Progressive Labor Party?

A Yes, he did.

Q Did he at any time sell or promote the Revolutionary Communist Newspaper, "Challenge," to you?

A Yes, he did.

Q Can you tell the Trial Committee at what time?

A Well, in the summertime he gave me the newspaper, and roughly, about two weeks ago, he sold me a newspaper.

Q Did he sell it to you on the premises at Varig?

A Yes, he did.

Q And there was a charge of what?

A Ten cents.

Q In your converations with Mr. Turner, did he ever reveal to you what services he offered the Progressive Labor Party, other than his distribution and selling of the newspaper, "Challenge"?

A In the newspaper there's a page in there which says that for more information about the Progressive Labor Party to contact certain addresses in the United States, and one of the addresses was in Bay Shore.

I mentioned that there was an office out here,

and he said that he knows, that it was his post office box.

Q In other words, Mr. Turner maintains a post office box to distribute information dealing with the Progressive Labor Party for any interested parties?

A Yes, he does.

Q Has Mr. Turner ever revealed to you or discussed with you the extent to which he adheres to the beliefs and policies of the Progressive Labor Party?

A Yes, he did. He said that a communist system would not come by electoral process because the ruling class would not let it happen. If the voters wanted it, it still wouldn't be so. He also said that when the revolution comes, some people will have to be killed.

Q Did he use the word "killed"?

A Yes, he did. When I asked him about that later on -- I asked him who he meant -- he had said he meant the Rockefellers.

Q In other words, he was advocating some sort of violence in relation to this party?

A Yes.

MR. TOBON: No further questions.

THE CHAIRMAN: Brother Turner?

* * * * *

MR. TURNER: That's all.

MR. TOBON: That's all.

At this time I would like to recall Mr. Henry Meyers.

(Witness Kenneth Hetty excused at 7:00 P.M.)

H E N R Y F. M E Y E R S, recalled as a witness on behalf of the plaintiffs, having been previously duly sworn, resumed the stand and testified further as follows:

THE CHAIRMAN: I would like to remind you, Brother Meyers, that you are still under oath.

THE WITNESS: Yes.

DIRECT EXAMINATION (continued)

BY MR. TOBON:

Q Mr. Meyers, on the date of December 10, 1975, were you working at Varig Airlines at approximately 1400 hours?

A Yes, I was.

Q You were there in your capacity as lead agent?

A Yes.

Q At that time did a gentleman come in and deliver a package for Mr. Turner?

A Yes, he did.

Q And did you receive the package?

A The package was, more or less, just laid on the table, and he said, "Can you see that Mr. Turner receives this package?"

Q This was on the premises?

A Yes.

Q At that time what did you do with the package?

A They left it on the desk and then a fellow, Danny Alvino, senior agent, said to put it on the time clock; you know, where you clock out and you see your mail. So, I took the envelope, and the clasp was open. The papers were inside. So, we put it up there for him to see. The time was approximately 1355 or 1400, because the off-going shift was ready to clock out.

Q When the envelope opened, what were the contents revealed to be?

A The paper, the "Challenge."

Q Was it this paper?

MR. TOBON: I believe you have it, Mr. Chairman.

Q Is this the paper you saw?

THE CHAIRMAN: Exhibit 4?

MR. TOBON: Yes.

A Yes, that's it, because all of these come on the floor.

Q At that time did Mr. Turner come in and retrieve

his package?

A It would be sometime later, because the shift was assigned, and we were working. I would say it was approximately 1410, 1415, or somewhere around there.

Q So, these papers were delivered to the premises at Varig Airlines?

A Yes.

Q Have you, in your position as lead agent or shop steward, ever had the opportunity to speak to Mr. Turner on his beliefs?

A No. How do you mean? Did he ask me my opinion or anything?

Q Did he discuss anything with you or with the shift or anyone present?

A Not to me, no. The only thing is with the paper. He gave me the paper; that's all.

MR. TOBON: All right. Cross-examination?

MR. TURNER: Yes.

CROSS-EXAMINATION

BY MR. TURNER:

Q In relation to the package delivered, could you clarify how the contents were revealed and how any of the contents might have come into evidence at this trial hearing?

* * * * *

DIRECT EXAMINATION

BY MR. TOBON:

Q Will you state your full name and address for the record, please?

A Karl Joseph Molinaro, Jr., 221 Irving Place, Woodmere, New York, 11598.

Q In your time at Varig Airlines, Mr. Molinaro, did you ever have occasion to speak with Mr. Turner on communism-related ideas on the job and involving shop stewards and local politics on the job?

A Yes, I have.

Q Can you briefly tell the Trial Committee exactly what you discussed and what was said to you?

A In what respect?

Q In that respect.

A Gentlemen, he said to me the same as he said to Mr. Hetty, in a discussion on the premises; about when a revolution would have to take over this country, it would not be as a vote. Certain people would have to be eliminated.

When I asked what he specifically meant by "eliminated," he stated, "Killed," and when I asked him who, he said to start off with the Rockefellers. That was No. 1. Then, when this all came about, I approached him and asked

him how could he, a person born in these United States -- one who had been raised in these United States and who's lived in this country and has reaped the rewards that this country has to offer, in certain instances -- have anything to do, or any feelings whatsoever, with communism.

He stated to me, I believe, that communism -- not as far as a country such as Russia or like that -- he said to me, "I am a Marxist, if you know what that is and if you've read anything on Karl Marx." My statement to him at that time was that I never read anything on Karl Marx.

He said, "I only know communism from what I have seen of it, being in the service, and seeing what it's done to certain people and how they had to live." I stated to him at that time that although he is entitled to his own personal opinion and beliefs, I felt it was in bad taste for him to introduce these beliefs and these realisms that he believes in and his own opinion into the company and into the union politics solely because -- if I may add -- you have gentlemen that had to evacuate communist countries -- that lived there -- that work for us, such as Cubans, and you have had individuals that fought for this country in the United States Armed Forces to protect it from such a disease. I use the word "disease" because that's what it

* * * * *

obviously, Mr. Tobon is going over the whole line of conversation. He should be, rather, asking a question as to what it was the witness said rather than leading him into a converation.

MR. TOBON: The question was put to the witness to describe the conversation. The witness did so. The Trial Committee instructed me to ask it as a question.

THE CHAIRMAN: That's true, but you're sort of leading the witness. If you could ask him questions and have him respond with as little --

MR. TOBON: Briefly, yes.

THE CHAIRMAN: Yes, as little statement-wise as possible. I will have to sustain that.

MR. TOBON: I think, at this time, there would be no further questions.

THE CHAIRMAN: Do you have any cross-examination of the witness?

MR. TURNER: Yes.

CROSS-EXAMINATION

BY MR. TURNER:

Q I'd like to know when we allegedly had a conversation about a revolution or workers taking over state power and people being killed or anything of that nature

where any reference was made to my beliefs or opinions.

A We sat down about ten or eleven months ago, and we were having coffee. I believe it was in the customs area, if I remember correctly. We were sitting, having coffee, and we just started talking about different things, about what was going on with you; things about the Vietnam situation, and what have you, and then we started talking about things, and you came out with the statement, such as I had stated, after several questions asked of you by myself and Mr. Brown, who was there and who is not here now, and Mr. Metty, who was also there.

Q You say that Mr. Brown and Mr. Metty were there at the time and can attest to your statement?

A I believe so, yes. There were a bunch of other people around, too, that were more or less hearing the conversation, but nobody with specific viewpoints.

Q Can you say definitely that specific people in the room would attest to it?

A He is sitting there, right to your right.

Q Well, I can't do that now. I am asking you if --

A Yes.

MR. TURNER: All right.

THE CHAIRMAN: Any further questions of the witness?

MR. TURNER: No.

THE CHAIRMAN: Thank you.

MR. TOBON: As my next witness, I'd like to call Victor Matos to the stand.

(Witness Karl J. Molinaro excused at 7:15 P.M.)

V I C T O R M A T O S, called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TOBON:

Q Will you state your full name and address for the record, please?

A Victor Matos, 112 Prairie Drive, North Babylon, New York, 11703.

Q Sometime in mid-November did you receive a copy of a leaflet issued by Mr. Turner which has been designated as Plaintiffs' Exhibit 1?

A Yes.

Q Did you, at that time, have any converation with Mr. Turner about this leaflet, and did you express any views or opinions to him at that time?

A Yes, I did.

Q Can you briefly state those views or opinions which you gave to Mr. Turner?

A Well, as I recall it, I was coming into work and he handed me the leaflet. I went upstairs to the locker room to change and I read it. I came downstairs and asked Turner if I could talk to him. He said, "Yes."

We went outside, and I gave him back the leaflet and told him to please not give me any more of that kind of literature again because I don't believe in it, and because of personal reasons, I didn't want him to give me any kind of -- you know.

Q So, at that time you had a very strong personal opinion?

A Yes.

Q And personal reasons as to why you did not choose to see that type of literature being handed out on the job at Varig Airlines?

A Right.

MR. TOBON: No further questions.

THE CHAIRMAN: Any cross-examination?

MR. TURNER: Yes.

CROSS-EXAMINATION

BY MR. TURNER:

Q Do you remember at all what my reaction was, how I replied to what you had asked me and said to me?

A Yes, I do.

* * * * *

record, please.

A Aluizio Bastos, 58-19 48th Avenue, Woodside, New York.

Q Mr. Bastos, in your time of employment with Varig Airlines, did you ever have any opportunity to speak with Mr. Turner on his communist views in any way involved with the campaign for shop steward, or just in general conversation?

A Yes. Many times we spoke about it, but I never took it serious. I never continued the conversation. We always dropped the conversation.

Q Did you, at any time during this same period, receive, or see Mr. Turner with a copy of "Challenge"? Did he give you one?

A Yes, he gave me a couple of copies. 3

Q Did you ask for these copies?

A No.

Q They were just given to you?

A He offered me a copy.

Q Can you tell us approximately when?

A Around eleven months ago, I would say.

Q And these copies were not solicited, they were just given to you?

A Yes.

Q To your knowledge, has this paper been distributed to any other members of Varig Airlines within your realm of knowledge?

A Yes, a few of them had copies.

Q Were you aware that this copy is in Spanish also?

A Yes. That's why he mentioned it the first time, that if I couldn't understand the English, I could read the Spanish.

Q That was the reason for him showing you the copy that it was readable in --

A In both languages, yes.

MR. TOBON: That's all. No further questions of the witness.

THE CHAIRMAN: Brother Turner?

MR. TURNER: Do you care to reveal any of the discussion, political views or anything, as the other witnesses might have done, that I might have volunteered to you?

THE WITNESS: No, I don't think so. I never gave that much attention to it.

MR. TURNER: No further questions.

MR. TOBON: At this time I have no further witnesses, and I'd like to sum up, if I may.

THE CHAIRMAN: Well, usually the procedure is

* * * * *

THE CHAIRMAN: I'd like to remind you, Brother Metty, that you're still under oath.

REDIRECT EXAMINATION

BY MR. TOBON:

Q Mr. Metty, in your testimony before you referred to an incident that happened eleven months ago. Can you now elaborate on it, for the Trial Committee and the members present, and tell us if this incident was the only incident, or if talk of communist ideas and views continued throughout the year. Was this an isolated incident?

A It continued throughout the year.

Q Can you describe to the Trial Committee how often and when and where discussions were held?

A Well, like I said before, in the course of driving back and forth to work in the car pool and at work sometimes, after he had put his first memo up on the board.

Q At what time was this?

A When the campaign for shop steward was coming on.

Q And this was this past November?

A November. That's when they had the election, right.

Q During the month of November, then, you had an opportunity to speak with Mr. Turner on his ideas, communist ideas?

A Yes.

Q And discussions were held throughout the Varig Cargo Department as to these ideas?

A Yes.

Q In other words, these conversations and discussions were constant; they occurred over a long period of time and up to and as recently as what date? When would you say was the last time you had discussed this with Mr. Turner?

A About a week ago.

MR. TOBON: All right, no further questions.

THE CHAIRMAN: Recross?

RECROSS-EXAMINATION

BY MR. TURNER:

Q Do you remember how soon before the actual election the leaflet issued came out, how many days before the election?

THE CHAIRMAN: Which leaflet? Just to clarify.

MR. TURNER: The leaflet that was issued before, Exhibit 1.

THE CHAIRMAN: Exhibit 1, all right.

A How long before the election did you put that up on the board or hand it out?

Q Right.

A Roughly a week -- I'd say about a week before the election.

Q Could it be more or could it be less?

A It could be more.

Q The other question is, in relation to the nature of the political discussions and in relation to general discussions around union questions, would you say that these kinds of -- well, let me ask you a direct question. Were discussions around political issues generally private, one-to-one discussions or one-to-two discussions like, say, in a car pool, or would you say a gathering-type of discussion?

A They were usually one-to-one discussions or in the car pool with one or two other members of the car pool.

Q Were these discussions initiated as a general discussion among groups of people, you know, that were gathering for coffee breaks or -- I'm talking about political ideas now.

A Well, if you mean the discussions, were they happening in a large group, yes, they were in a large group also at work during coffee break time. That was when you were running for shop steward.

Q Did I request these discussions or did people want to know what I meant by certain -- in other words, the

charges were filed and a question came up as to whether I was conducting myself properly as a union member within the periphery of the union Constitution. Was this something I initiated, or was there general discussions where I was asked questions?

A I don't understand --

MR. TOBON: Well, I --

MR. TURNER: I think it's important.

THE CHAIRMAN: And I agree, but the question was so lengthy that I don't think the witness really understood it. It went on and on. Could you sort of shorten it up and come right to the point with the question?

Q The question is, were there more than two people involved at one time? Did I initiate these discussions, or were the discussions sort of foisted on me?

A From what I know, the discussions started by other people who wanted some clarification as to what your memo was up on the bulletin board prior to the election. They wanted to clarify your views. That's how the discussion usually would start.

Q Let me ask you about discussions of general union questions, contracts, meetings, et cetera -- reports -- do you remember any of these kind of meetings being held and

* * * * *

A The clarification I'd like to make is such: The conversation was between Mr. Turner and myself, the same conversation where we talked of Marxism, et cetera, as I stated before. It was after I had heard it in discussion and coffee break -- and I stated it wrong before -- that he viewed these opinions of which the revolution would take over and certain people would have to be eliminated and killed.

In my discussions with him I personally asked him, as such, in talking -- you know, did he say that, and he said, yes, he did. I further asked him what he meant by it, and he explained to me as such.

That's what I wanted to clarify, Mr. Committee, that he said it to me; that before, I had made a wrong statement -- not a false statement -- and when I thought about it later on, I realized I made a wrong statement, that I heard it before the coffee, that this was brought out, and that in my conversations with Mr. Turner alone, when we talked about it, I asked him questions. I asked him if he did say such a thing, and he said, "Yes," and that's the clarification I wanted to make.

THE CHAIRMAN: "Such a thing" means the earlier testimony?

THE WITNESS: Yes, the earlier testimony would

enter at this point.

THE CHAIRMAN: Is that all?

MR. TOBON: That's what we wanted to clarify.

THE CHAIRMAN: Brother Turner?

MR. TURNER: Well, I don't really understand what he -- all right.

RECROSS-EXAMINATION

BY MR. TURNER:

Q Could you recall the approximate time and place, again, of this alleged conversation?

A We were in the warehouse talking, you and I, and I had asked you --

Q When?

A I know it wasn't eleven or twelve months ago, as I said earlier. That was the clarification. I didn't mean eleven or twelve months ago. What I had meant is when we were talking in general, all during the time that different things were raised, and then when I heard the statement --

Q Could you be more specific as to time, please?

A I asked you about two weeks ago or so if you had said that in our conversations, when you talked to me of Marxism and stuff, and you said that you had mentioned certain things like that before, that certain people had to be killed if this was a revolution, and you further stated

that in every revolution there always is, and are, certain individuals that have to be removed.

MR. TURNER: All right.

THE CHAIRMAN: Any further questions?

BY MR. TURNER:

Q Was there anybody there at the time of this conversation?

A You and me in the warehouse.

Q I mean besides myself.

A No, there was nobody else there.

MR. TURNER: All right, thank you.

THE CHAIRMAN: Thank you.

MR. TOBON: At this time the prosecution rests.

THE CHAIRMAN: All right. Brother Turner, are you ready with any witnesses? Do you wish to call any witnesses?

MR. TURNER: Because of the job problem, I would call Sam Rodriguez first because there's a time problem with him.

(Witness Karl J. Molinaro excused at 8:05 P.M.)

S A M U E L R O D R G I U E Z, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

* * * * *

reap the profits on the way we earn a living.

I am not ashamed of my revolutionary ideas. However, I don't feel that the instances that were raised here of expressing these ideas were in the context of developing a movement within the union, at this time at least. I think anything that's done in relation to where the workers go and what happens is up to the majority of the workers.

I am all for democracy, but I think we have to see democracy work in our favor at all times and, therefore, I feel that any statements I have made were not made to -- in other words, to be flaunted in the face of the union or anything of that nature.

What can I say? I am a worker like the rest of you guys. I am not a lawyer. Maybe I have been sloppy in my defense because, you know -- who knows? I am just trying to do the best thing for me, for all the people here, and for the rest of the people on the job.

This is my opinion, which is the best thing, and I really feel that despite the political differences, that this issue was blown up out of proportion in desperation. Because of a lack of initial support, our chief shop steward saw fit to devote his full time

* * * * *

Appendix G

Exhibit B- Exhibits in the Trial of William Turner

EXHIBITS IN THE TRIAL OF
WILLIAM TURNER
LOCAL LODGE
1894

Exhibit B EXHIBIT #1

SHOP STEWARD ELECTIONS FOR 1976- The way I see it- Bill Turner

RUNNING FOR SHOP STEWARD IS A POLITICAL ACT! YOU CAN'T BE NEUTRAL. The honest, serious candidate has to choose sides. The shop steward represents the workers at all times, not management. We have to be sure that in negotiations our demands are being heard. The candidate who sees being shop steward as a stepping-stone to his personal success with the company, CANNOT BE TRUSTED, and should not receive even one vote from us.

In 1971, when I started working at Varig, the union and the company seemed to be the same. Cargo Supervisors.("an extention of management functions- Article IV, Sect.a, of our contract), were also the SHOP STEWARDS over the cargo department. In large measure, my efforts helped to change this picture. Now, Cargo Agents represent other Cargo Agents, etc.

Most of you know of my communist views, that the working-class should own and control all of society; that everyone becomes a producer, (not a welfare state); and that all production would be to fill the needs of all the people,(not for profit). My membership in the Progressive Labor Party, a working-class, revolutionary party, has taught me many valuable lessons about fighting for workers' rights. We learn from one another. Progressive Labor Party (PLP) members and friends are active shop stewards and local-union officers, in many unions, throughout the country.

During my year as shop steward, and long before I was shop steward, I helped make the union stronger, here at Varig. In spite of my advise, not to tie in the insurance plan with the rest of the contract, the overwhelming majority voted for it. Anyway,we did receive a pretty good wage package, while we still have a fight ahead of us for a better insurance and pension plan. Throughout the year, I have been on the job as shop steward,(not just during working-hours). I have discussed with you, advised you, appeared before management with you, processed your grievances and mine, and attended the meetings required of a shop steward, so that Varig workers have a voice in our union.

At my initiative, but together, we won weekly pay, upgraded the dental plan, won a safety committee, got adequate lighting in the warehouse, established union rights in the purchasing department, and won more respect by management, of us as union members. Now, we can go on and formulate the demands for the next contract which were cut short in the last negotiations. A WINNING TEAM NEEDS STRONG LEADERSHIP- VOTE WISELY ----

Exhibit B EXHIBIT #2

More on Shop Steward Elections- DOES YOUR CHOICE COUNT? - Bill Turner

Obviously, your choice does count, and will count even more in the future. The Union Leaders told Tobon not to let me win. So, when you gave me a majority vote,- suddenly- the Union By-Laws came to life. Presto, Change-o, we have a December election.

WHY DOES THE UNION LEADERSHIP WANT ME OUT AS SHOP STEWARD? Because I fight back; I give leadership; and I belong to Progressive Labor Party. They know that part of the P.L.P. program, is for rank-and-file, union members to control their own unions, and to do this, to build strong caucuses to gain control. They know that we don't compromise or allow a union sell-out. THIS IS WHAT THEY ARE AFRAID OF!

I probably will get attacked on the floor of the union meeting, this Wednesday, for expressing my views. A strong turnout at the meeting, of Varig workers, demanding my right to speak out, can turn this attack around.

We don't want union leaders in our industry to be able to throw away our pensions or benefits, as they are doing in the New York City workers' unions. That means that members have to be active and to know what's going on.

ARE MY COMMUNIST IDEAS, "ANTI-AMERICAN"? No, my communist ideas don't put me on the side of Russia, or China, or Cuba! The working-class in the so-called "socialist" countries have very little to say. These countries have a capitalist system just like in the United States. The only difference is that in those countries, all the wealth and production-machinery is owned by the government, which is controlled by a ruling-class of high-living "party" leaders, military leaders, and highly-skilled technicians. Here, in the U.S., the financial- industrialist dictatorship over the country is a little more hidden.

MY SIDE IS THE WORKERS' SIDE! So long as Capital property is privately owned, here, or in any part of the world, the workers, who produce all goods and services for society, will get back only a small part of the value of their work. The major part of labor value is ROBBED from us. The ultimate change that I want to see, is for the WORKERS to own and control ALL PROPERTY, capital, or otherwise! Then, with the bosses out of the way, we can begin to enjoy and share all the things in life which our brains and our hands create.

RIGHT HERE, AND NOW, OUR FIGHT IS TO KEEP AS MUCH OF WHAT WE PRODUCE, FOR OURSELVES AND FOR OUR FAMILIES! This means, keeping wages high- not losing to inflation. This means improving our benefits- NOTHING IS TOO GOOD FOR US!

Your vote for me on December 8th, 9th, and 10th, will allow me to continue to represent you and to serve you as shop steward.

Bill Turner

EXHIBIT #3

EXHIBIT #2

CHALLENGE

The Revolutionary Communist Newspaper

REVOLUTIONARY COMMUNIST LABOR PARTY December 4, 1975—Volume 12, Number 27 10¢

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RIKERS ISLAND REBELLION

NEW YORK, Nov. 26—The 1,616 ...risoners at Rikers Island took it over, ...anding better conditions in this ...overcrowded prison. The prisoners ...ressed that most of them had not been ...onvicted of anything and complained of ...xcessive bail by ...strict judges and ...ong and ...egally delays before trials. The prisoners won all their demands ...ncluding no punishment for the 17-hour ...ork.

Exhibit B

Strikes, Union Election of Communists Point to,

STORM BREWING AGAINST BOSSES

See pages 2, 3, 5, 7

NYC Varig Airlines Plier Elected Steward

Union Sellouts Void Elections

NEW YORK CITY—Workers at Varig-Brazilian Airlines re-elected PLP'er Bill Turner, running as a communist for shop steward, at the company's Kennedy Airport freight facility. Since the right-wing's all-out campaign against Turner failed, the union (Intl. Assoc. of Machinists, Lodge 1055) is voiding this election and organizing another attempt to defeat him.

AS A CARGO AGENT FOR NEARLY FIVE years at JFK, Turner has participated in and led a work-action at Varig (in 73) and organized support for strikes of other airline workers over the years. He has a reputation for fighting for every grievance on the platform. But this year a new ingredient was added.

While previously Turner's co-workers knew him as a militant trade unionist with revolutionary ideas, during this election Turner distributed a leaflet explaining his membership in PLP and how his communist ideas—especially that workers produce everything of value and therefore are entitled to all the fruits of their labor—have enabled him to be a better shop steward and fighter for workers' rights, with a non-compromise policy against the bosses.

The right wing—including the chief shop steward and his union superiors—went bananas. One fascist called for his blood. One of his opponents for the steward's post ran to the FBI, only to find out there was nothing they could do about it. (Then this character started a petition complaining about the introduction of communist ideas into the election campaign.) The Chief Steward asked the local president and General Chairman of the district for advice and was told to make sure every worker in the department saw the leaflet (which helped Turner greatly). The Chief Steward spent all his "working" hours campaigning against him and warned Turner that he would never let him continue as steward.

The rank-and-file's reaction was just the opposite. Workers congratulated Turner for taking his stand. He got calls from other departments offering support. For several days debates about communist ideas raged up and down the Varig cargo department. Turner answered every anti-communist bitch and carried the fight right back to the red baiters. The workers knew him as a fighter on the job over the years and now were beginning to understand the source of the ideas that led those fights.

THE ANTI-COMMUNISTS FAILED; TURNER was re-elected, getting 25 votes to 21 each for the next two candidates (two stewards' positions were being filled).

The Chief Steward was taken aback. Although Turner had pointed out to him before the election that the union constitution called for the nominations to take place in November and the election in December, the chief steward ignored this and said the election should proceed in November, shortening the campaign (otherwise he never expected Turner to beat the anti-communists). Now he turned around and voided the election, saying it had to be run over again in December!

This flunky intends to use challenge Turner's membership in the union, using the IAM's fascist anti-communist clause as his weapon. Turner and his class co-workers now must mobilize the whole department and other supporters into the broader local to pack the union meeting, stop this attack on their militant steward and prevent any expulsion. The loss of a communist shop steward would cost the workers dearly. Now is the time to fight like hell!

Exhibit C

Univ. of Minn. Clerks Defend PLPer

MINNEAPOLIS (Univ. of Minnesota)—Thursday the 13th was an unlucky day for Prof. Johannes Nitsche, head of the School of Mathematics, when

Buffalo: Teachers Strike

Fight for Job Security, Class Size

BUFFALO—Orchard Park and BOCES teachers, out to win crucial disputes with their employers over job security, class size and pay increases, are maintaining high levels of morale and strike militancy at their schools near Buffalo, N.Y.—despite the state's Taylor Law and a State Supreme Court temporary restraining order directing them back to their jobs.

EIGHT OF STRIKE LEADERS WERE JAILED briefly at the outset of their strike by State Supreme Court Justice Norman Stiller, who has also ordered

picketing a trustee's home. The OP strike is the longest teachers' strike in NYS history, and is certainly one of the fiercest of the 17 teachers' strikes across the state this fall. Seven of these strikers have been in Western New York.

The negotiations have been spurred by a public meeting of over 1200 people November 6, where the District agreed to resume bargaining even though the teachers had not returned to work. The strikers' daily needs for food, clothing and child care are supplied by the union and supporters at a "crisis

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Exhibit D

CHALLENGE-DESAFIO

December 18, 1975
Volume 12, Number 29

Published weekly, except Christmas week, by the Progressive Labor Party

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THE PROGRESSIVE LABOR PARTY FIGHTS FOR SOCIALISM.

Socialism means liberation for the entire working class—the destruction of the bosses—a society of abundance and full employment—an end to exploitation—a secure and creative future for all workers—and an end to the racism, fascism and wars that are all products of capitalism.

In order to achieve socialism, the capitalist system, the bosses and their dictatorial government must be crushed. This cannot be accomplished peacefully through elections.

It can only happen when the majority of the exploited unite behind communist leadership, violently overthrow the bosses, and install a new government of revolutionary workers—the dictatorship of the proletariat.

Members of the PROGRESSIVE LABOR PARTY are devoted to this goal. They dedicate their lives to actively building, promoting and organizing for the cause of revolutionary communism.

The Progressive Labor party and its newspaper, Challenge, are dedicated to the U.S. working class and the working class of the entire world—black, Latin, white, Asian and Native American.

Our newspaper, Challenge, strives to present the unconditional truth of class struggle so our class can learn from experience how to win.

Unless we can organize communist-led groupings in every shop layoffs will continue. Unless we have these groupings more and more abuses will be heaped upon workers, and we will just have to take it. Communist-led groupings (fractions) can turn every shop into a battlefield. This will let the boss know that they can't rely on their union goons to betray and lull workers every time they attack. Strikes and marches will become common-place. Today's sporadic strike will become tomorrows' rule. Workers will march to war against those who oppress them. It will be the ruling class who will have to retreat and give ground to the working class.

Every campus must also be turned into a fortress against the bosses' cut-backs and tuition hikes. Administration buildings must be seized and held until the cut-backs are reversed. Classes must be converted into centers of struggles against bosses' racist and anti-working-class courses. Racist texts must be scrapped along with the racist teachers. Pro-boss ideas must be refuted and the schools become centers for communist organizing. On every campus we must force the administrators to bow to the just wishes of the students and honest faculty. Strikes must be organized to enforce our will.

In the community communist led groups can fight to make the bosses clean the streets. Fire traps should be torn down or converted

Exhibit B

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EXHIBIT B

CHALLENGE

The Revolutionary Communist Newspaper

PROGRESSIVE LABOR PARTY December 18, 1975—Volume 12, Number 29 10¢

A WEEK OF STRUGGLE

RANK-AND-FILE VICTORY

CUERNEVACA, Mexico—The rank-and-file slate of Raimundo Jaimes, Esteban Ortiz and Sabas Rendon won the elections for the leadership of the Independent Union of Nissan autoworkers here. The slate won in spite of the lies and attacks by the bosses, sellouts and the police. (More details next issue.)

INDONESIA INVADES TIMOR

TIMOR—As soon as Ford ended his trip

To Beat Cuts & Capitalists:

WORKERS CAN WIN ONLY WITH COMMUNIST LEADERSHIP

Exhibit B

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EXHIBIT 6

Exhibit B

12/4/75 TO CLEAR UP SOME MISUNDERSTANDINGS WHICH AROSE IN THE COURSE OF THE SHOP STEWARD CAMPAIGN- Bill Turner

First of all, let me say, IN NO WAY, did I intend to say that I was running for shop steward as a "communist candidate". (as if there were a "communist ticket" and a "non-communist ticket") IN NO WAY, was I saying that voting for me, meant voting for "communist leadership" in the union.

The only reason I included a paragraph in the leaflet I issued, which mentioned my communist views (a-la- Karl Marx, not- Breshnev, Mao, or Castro), was to be open and above-board with my fellow-workers. I DID NOT try to tie in my political views with the campaign for shop steward, as my oponents would have you believe.

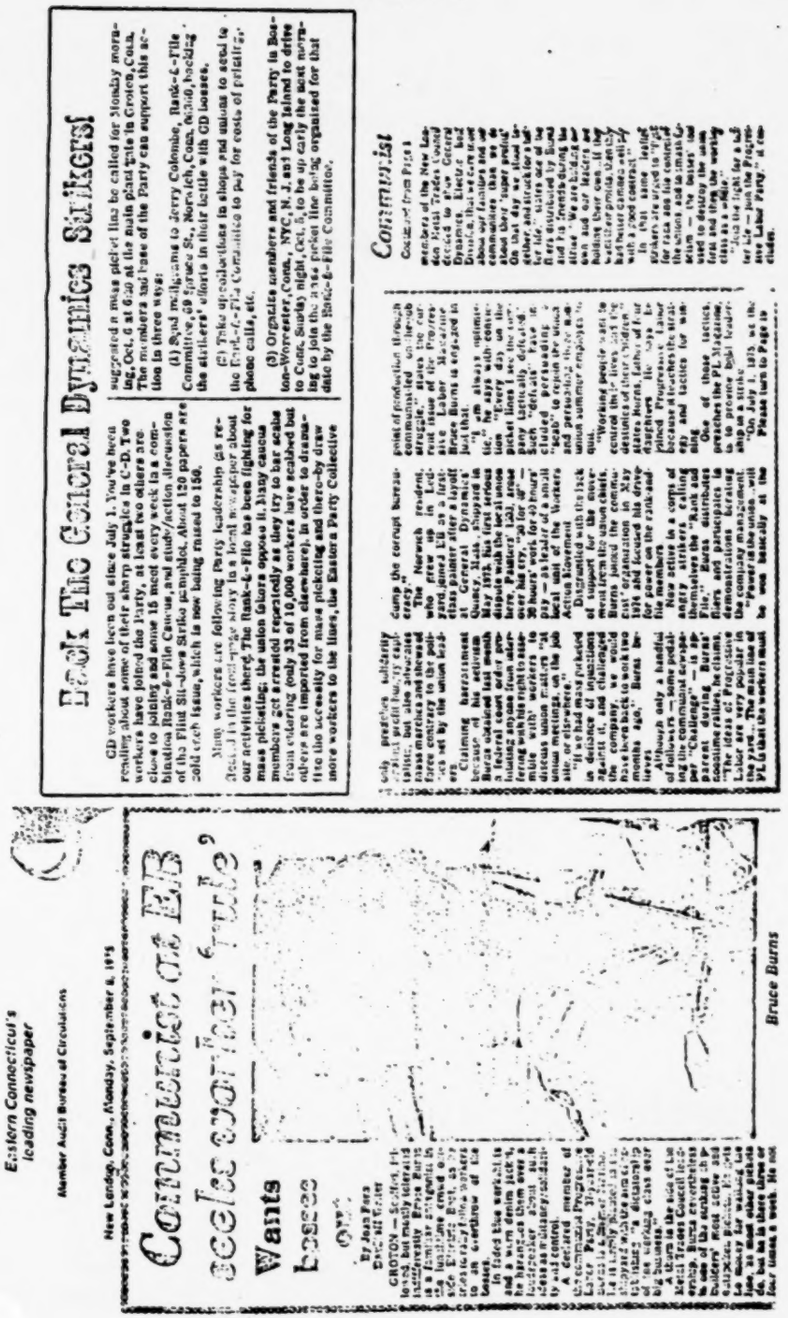
To any of you who may have felt insulted or "tricked", I am sorry there was any misunderstanding. The article which apeared in Challenge newspaper, was based on factual information which I sent in to the editors. In editing the article, which I gave them permission to do, several changes in meaning and exaggerations appeared in the article.

I hope this clears up most of the misunderstandings. I know that there remains, among many people, very basic disagreement on politics. Nevertheless, there will always remain, very basic agreement on the issues we face on the job, now, and in the coming years. THE KIND OF LEADERSHIP A SHOP STEWARD GIVES, ON THE JOB, REMAINS THE FUNDEMENTAL ISSUE.

CHARGES FILED AGAINST ME WITH THE LOCAL UNION- My trial hearing will take place Thursday, December 11th, at 6:00 P.M., at the Holiday Inn, Blue Room- 175-15 Rockaway Blvd. The chief shop steward, in the name of the workers at Varig Airlines, leveled charges against me, that I violated sections of the union constitution by "encouraging communist ideas". I cannot believe that a majority of my fellow-workers agree that I should not have the freedom of speech which the laws of the land and the U.S. Constitution demand. These clauses of the union constitution clearly violate our fundemental rights, and should never be put into effect.

I now ask for your support, in the spirit of fair play and unity which we enjoyed over the years. Clearly, the union leadership will try to use this trial to prohibit me from representing you as shop steward. They may try to do worse. TO PROTECT YOUR OWN RIGHTS, YOU HAVE TO DEFEND MY RIGHTS! The motto of the union movement ought still to be, "all for one, and one for all." It still can be, but it is up to each one of us to speak out and sign the petition to the union, which I prepared. Then, come down to the trial hearing, next Thursday, and tell the union trial committee to DROP THE CHARGES.

Exhibit B



Back The General Dynamics Strikers!

GD workers have been out since July 1. You've been reading about some of their sharp struggles in C-D. Two workers have joined the Party, at least two others are close to joining and some 15 meet every week in a committee Rank-&-File Caucus, and study/action discussions of the Fluid Sit-Down Strike pamphlet. About 120 papers are sold each issue, which is now being raised to 150.

Many workers are following Party leadership as reflected in the front-page story in a local newspaper about our activities there. The Rank-&-File has been fighting for mass picketing; the union leaders oppose it. Many caucus members got arrested repeatedly as they try to bar scabs from entering (only 33 of 10,000 workers have scabbed but others are imported from elsewhere). In order to dramatize the necessity for mass picketing and thereby draw more workers to the lines, the Eastern Party Collective suggested a mass picket line be called for Monday morning, Oct. 6 at 6:30 at the main plant gate in Groton, Conn. The members and base of the Party can support this action in three ways:

(1) Send telegrams to Jerry Colombe, Rank-&-File Committee, 69 Spruce St., Norwich, Conn. 06360, backing the strikers' efforts in their battle with GD bosses.

(2) Take sympathy strikes in shops and unions to send to the Rank-&-File Committee to pay for costs of printing, phone calls, etc.

(3) Organize members and friends of the Party in Boston-Worcester, Conn., NYC, N. J. and Long Island to drive to Conn. Sunday night, Oct. 5, to be up early the next morning to join the 6:30 picket line being organized for that date by the Rank-&-File Committee.

Eastern Connecticut's leading newspaper

Member Audit Bureau of Circulations

New London, Conn., Monday, September 8, 1975

Communists in GD Local Want Ousted Trio Reinstated

By Jean Pera

Bruce Burns

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Appendix H

Exhibit C - Trial Committee Report of William Turner

TRIAL COMMITTEE REPORT
OF WILLIAM P. TURNER

EXCERPTS FROM MINUTES

Exhibit C

We the members of IAM local 1694 and employees of Varig Brazilian Airlines do hereby wish to bring to the attention of the Union that one of our fellow members (William Turner) is openly and in contempt violating the IAM Constitution Article L which deals with improper conduct of a member by advocating Communist ideas and incorporating these ideas with his campaign for Shop Steward .

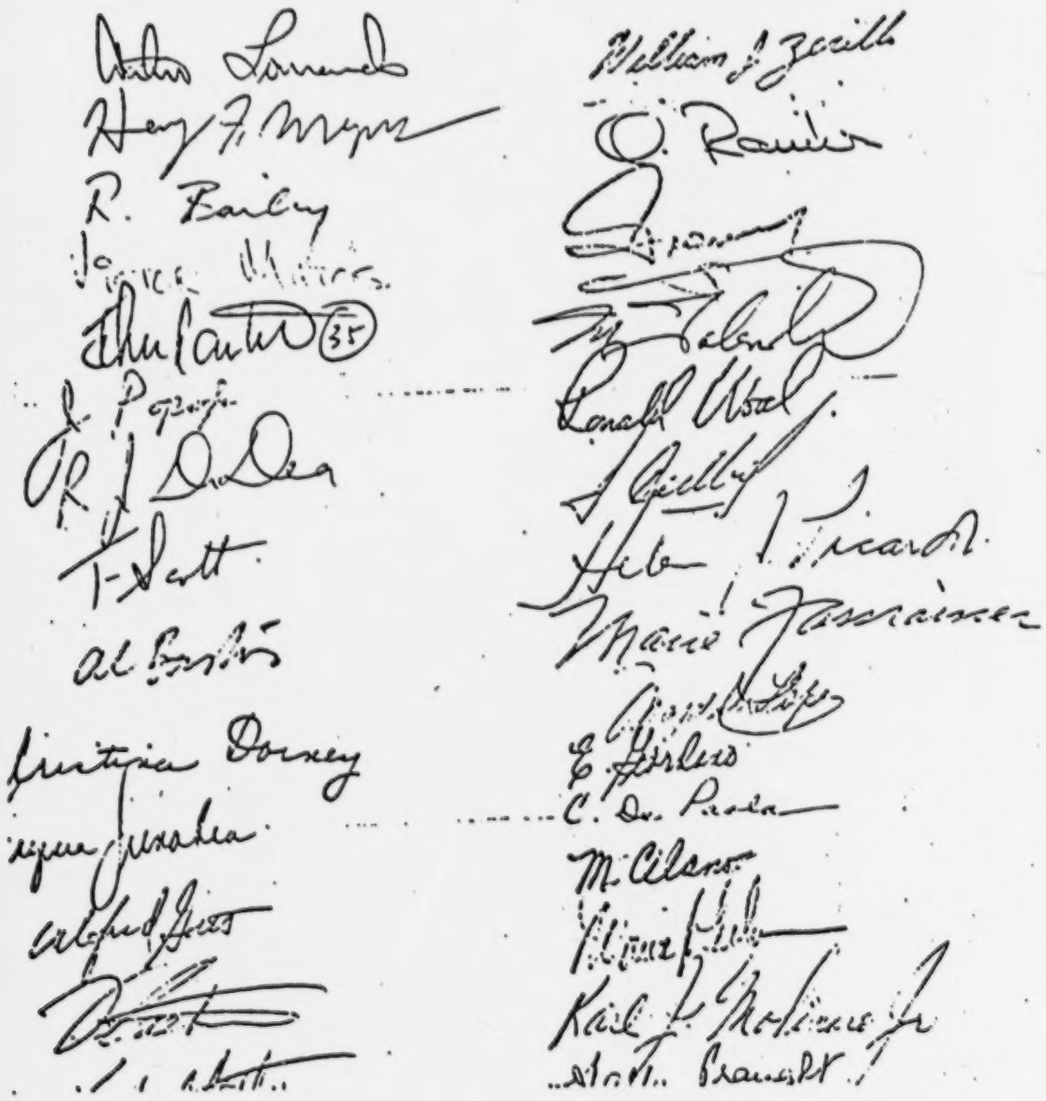

Exhibit C

Air Transport Lodge 1694

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
JOHN F. KENNEDY INTERNATIONAL AIRPORT, NEW YORK

December 3, 1975

Mr. W. Turner
6 Jensen Road
N. Bayshore, N.Y. 11706

Dear Sir and Brother,

In accordance with the provisions of the Constitution of the IAMAW, the Trial Committee has decided that a trial hearing is warranted for the charges that were brought against you by the members of Varig Airlines, which are improper conduct of a member under Article L of the Constitution.

This hearing will take place on Thursday, December 11, 1975 at the Holiday Inn located at 175-15 Rockaway Blvd., Jamaica, N.Y. at 6:00 P.M.

The hearing will be conducted in accordance with the applicable provisions of the Constitution of the IAMAW.

Fraternally Yours,

Fred Howitt
Chairman, Trial Committee

cc: Trial Committee, J.A. DePeter, E. Mellina, F. Finnegan, M. Clarke
cc: Plaintiffs(Varig Brazilian Airline membership) LL 1694

Exhibit C

December 2, 1975

Mr. W. Turner
6 Jensen Road
N. Bayshore, N.Y. 11706

Dear Sir and Brother,

Enclosed you will find a copy of the charges that have been filed against you by the IAMAW members of Varig Airlines. You are charged of misconduct of a member under Article L, Section 3 of the Constitution of the International Association of Machinists and Aerospace Workers.

Fraternally Yours,

Lloyd Colley
President

Enclosures: Copy of Charges
Constitution of IAMAW

Exhibit C

January 29, 1976
Subject: Trial of W. Turner

Mr. William Turner
6 Jensen Road
N. Bayshore, N.Y. 11706

Dear Sir,

At the Regular Meeting of the Local Lodge which was held on January 28, 1976, the Trial Committee which had been convened to consider the charges that had been filed against you reported their findings to the membership in attendance.

This is to inform you that you have been found guilty of the charge of violating Article I of the IAM Constitution which deals with improper conduct of a member by advocating Communist ideas.

The penalty that has been imposed is that you be expelled from membership in the International Association of Machinists and Aerospace Workers. An appeal from these findings may be made in accordance with Article L, Section 14 of the Grand Lodge Constitution.

Sincerely Yours,

J.A. DePeter
Recording Secretary
Local Lodge 1894

cc: G.S.T.
F. Hewitt, Chairman of Trial Committee.
L. Colley, President, Local Lodge 1894
S. Nathan, Financial Secretary, Local Lodge 1894
file

Exhibit C

January 29, 1976
Subject: Trial of W. Turner

Mr. Stanley J. Nathan
Financial Secretary
Local Lodge 1894
760 Truman Avenue
East Meadow, N.Y.

Dear Sir and Brother,

The following language from Section 17 of Article L of the IAM Constitution is brought to your attention so that you may be guided on matters concerning William Turner, Book Number AM16975:

"While any member of the L.L. is exercising the right of appeal, the financial standing of such member shall not be impaired by refusal to accept dues until the E.C. has passed on the appeal."

Fraternally Yours,

J.A. DePeter
Recording Secretary
Local Lodge 1894

cc: G.S.T.
President L.L.
Chairman of Trial Committee
W. Turner
file

Appendix I

Exhibit D - Air Transport Lodge 1894
Report of the Trial Hearing

Air Transport Lodge 1894

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
JOHN F. KENNEDY INTERNATIONAL AIRPORT, NEW YORK

REPORT OF TRIAL HEARING OF MEMBER WILLIAM TURNER

At the Local Lodge meeting in the month of November, 1975, charges of improper conduct were submitted in writting to President Lloyd Colley against W. Turner by some thirty union members of Varig Airlines. The charges were as follows: "We the members of IAM Local 1894 and employees of Varig Brazilian Airlines do hereby wish to bring to the attention of the union that one of our fellow members , William Turner, is openly and in contempt violating the IAM Constitution Article L which deals with improper conduct of a member by advocating Communist ideas and incorporating these ideas with his campaign for shop steward."

President Colley appointed a trial committee consisting of the five following members: Fred Hewitt, Vice President, Chairman; J.A. DePeter, Recording Secretary, Committee Secretary; E.Kellina, M.Clarke, Frank Finnegan.

This Trial Committee proceeded to investigate the charges and decided that there was sufficient evidence to warrant a trial hearing. The respective parties were notified that the hearing would take place at the Holiday Inn at 175-15 Rockaway Blvd., Jamaica, N.Y. on December 11, 1975 at 6:30 P.M.

The trial hearing commenced at the appointed time. Present at this trial hearing were all the duly appointed committee members, William Turner, Jorge Turner, Chief Shop Steward of Varig Airlines and eight of the orginial signees of the letter of charges, A. Bastos, W. Lehner, V. Matos, K. Metty, K. Molinaro, H. Meyers, H. Picardi, and W. Zerillo. The trial reporter was Myrna Shore, an employee of Esquire Reporting Company Inc.

The trial came to order. The chairman asked the plantiffs if the had appointed an attorney to present their case and he was notified that they had chosen Jorge Tobon.

The chairman then asked the defendant if he had appointed an attorney to act in his behalf. William Turner replied that he would represent himself. Stan Nathan, Financial Secretary of LL 1894 was then called by the trial committee. He testified under oath that all those present were members in good standing. The defendant was then asked what his plea to the charges was and he replied "not guilty." Jorge Tobon was then directed to present his case.

Documentary evidence was submitted to the committee by J. Tobon. Exhibit #1 Shop steward campaign literature: The way I see it- Bill Turner. In this piece of literature W. Turner writes about "his communist views that the working class should own and control all of society; that everyone should become a producer and not a welfare member and that all production would be to fill the needs of the people and not for profit. My membership in the Progressive Labor Party, a working class revolutionary party has taught me many valuable lessonsabout fighting for workers rights."

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Exhibit D

REPORT OF TRIAL HEARING OF MEMBER WILLIAM TURNER
PAGE #2

Ken Metty, member from Varig Airlines took the stand was placed under path. Metty testified that he had recieved a copy ofexhibit #1 from Turner.(No cross examination was given by Turner.)

J. Tobon then presented ehibit #2, more literature by W. Turner, entitled " Does Your Choice Count ?" In it Turner states that he belongs to the Progressive Labon Party and also talks about his communist ideas.

Henery Meyers was called to the stand and was administered the oath. Meyers testified that he had seen exhibit #2 on the bulletin board on the property and that W. Turner's signature on it was, to the best of his knowledge that of W. Turner.

Jorge Tobon then presented Ehhibit #3 entitled "Challange, the Revolutionary Communist newspaper." dated Decembe 4, 1975. Vol.12, No. 27. Tobon then read into the record from this paper on page #7 an article entitled: " NYC Varig Airlines PLPer elected a shop steward. but union sellout voids election." The article reported that Turner had won a shop steward election and that the election had been protested by the Cief Shop Steward, J. Tobon at Varig ; that the protest had been upheld and being runover. It also talkes about Turners' running as a communist for shop steward and how Turner answered every anti-communist trick and carried the fight back to the red baiters.

After he had read the complete article into the record, he also sub mitted additional copies of CHALLANGE (Exhibit #4) and the proceeded to read into the record the motto of the Progressive Labor Party from a copy of CHALLANGE dated December 18, 1975:" The Progressive fights for socialism. Socialism means liberation of the entire working class, the destruction of the bosses, a socirty of abundance, full employment, an end to exploiation, a secure and creative future for all workers, an end to racism, facissm, and wars that are the products of capitalism. In order to achieve socialism, the capitalist system, the bosses and their dictatorial government must be crushed. This cannot be done peacefully through elections. It can only happon when the majority of the exploited unite behind communist leadership, violently over-through the bosses and install a new government of revolutionary workers, the dictatorship pf the proletariat. Members of the Progressive Labor Party, are devoted to this goal. They dedicate their lives to actively building, pro-moting and organizing for the cause of revolutionary communism."

Bro. Metty was returned to the stand and testified that Turner advocated and encouraged communism, and that he was a member of the Progressive Labor Party and that Turner had sold him a copy of the newspaper CHALLANGE for 10¢ at Varig. He also said that in the newspaper CHALLANGE there is a section that if anyone wanted more information about the PLP to contact certain addresses in the U.S.A. one of which is located in Bayshore, N.Y,.a post office box that he maintained for the PLP. He also testified that Turner told him that people would have to be killed when the revolution comes and he specified the Rockfellers'.

Under cross examination by Turner Bro. Metty admitted that he had asked Turner for the newspaper CHALLANGE . Turner also brought out that discussions on revolution and his membership in the PLP came out in conversations that took place while he and Metty car polled

Exhibit D

REPORT OF TRIAL HEARING OF MEMBER WILLIAM TURNER
PAGE #3

Brother Meyers was returned to the stand and testified one day while he was on duty, a man came into Varig and handed a package over the counter. It fell and the contents were exposed. The package contained copies of the paper CHALLANGE. Bro. Meyers testified thar Turner had also given him a copy of CHALLANGE.

On cross examination Turner asked Meyers how the clasp on the package had become oponed and how a copy of CHALLANGE that had been entered in evidence at the trial had got here and Meyre testified that he didn't know.

Brother Tobon then presented exhibit #6, campaign material by Turner entitled " TO clear up some misunderstandings which arose in the course of the shop steward campaign." He read this statement intothe record. In it Turner wrote about the article that had appeared in CHALLANGE. "the article was based on factual information which I had sent to the editor (refering to exhibit #3)".

Brother Molinaro was sworn in and testified that Turner had also told him that certain people would have to be killed when the revolution took over this country and that the Rockfellers would be number 1.

On cross examination Bro. Molinaro stated that this conversation with Turner had taken place about ten or eleven months ago in the customs area at Varig and that Bro. Metty was also there.

Brother Matos was sworn in and testified that he had been given a copy of exhibit #1 by Turner and that he had handed it back.

On cross examination Turner asked Matos what his (Turners) reaction was when he was handed back exhibit #1, Matos then testified That Turners reaction was to explain that the kind of communism he was trying to put forward in the leaflet wasn't the same as in Cuba or Russia or anyother communist country. Turner asked Matos if he recalled that he (Turner) had called Cuba a facist dictatorship, but Matos could not recall the statement.

Brother Bastos was sworn in and testified that Turner had give him a couple of copies of CHALLANGE and had pointed out that the paper was also printed in Spanish

Bro. Metty was recalled to the stand and testified that his conversations with Turner had continued for over a year

Under cross examination by Turner Bro. Metty admitted that Turner had never called meetings to talk on political subjects

Brother Mollinaro was recalled and testified that his conversations with Turner had taken place during coffee breaks. Under cross examination Mollinaro stated that the conversations had taken place two or three weeks ago in the wharehouse.

THE DEFENSE THEN PRESENTED ITS CASE

Exhibit D

REPORT OF TRIAL HEARING OF MEMBER WILLIAM TURNER
PAGE #2 4

Brother S. Rodriguez, Chief Shop Steward at Northwest Airlines testified that he had never seen anything improper in Brother Turners conduct and that he regarded Turner as a good union member and a militant shop steward at Varig.

Under cross examination Bro. Rodriguez stated that he was not a member of the Progressive Labor Party.

Brother Turner called Brother Lomba to the stand and Lomba testified that that any conversations he had on political matters were just two individuals talking. Lomba also testified that he ahd never seen or heard Turner encourage communism. Turner asked Lomba if he thought that he done anything improper by including his political views in his campaign literature annd Lomba thought that Turner had done so because he didn't want this information to come out afterwoods, and people would say he had hid these facts.

On cross examination Brother Lomba admitted that his opinion had changed about Turner when the article appeared in CHALLENGE which stated that we voted for Turner because we thought he was a communist. He stated that he had written a letter stating that he had voted for Turner because he was a good shop steward and not because he was a communist.

La Rocca

Brother testified under oath that he had never heard Turner discuss his communist ideas on the job. Brother LaRocca also testified that that in a conversation with Turner, he (Turner) had said in reference to the article in CHALLANGE that they did not print it the way he wrote it. Additional testimony by Bro. LaRocca in response to questions by Bro. Turner indicated that he believed that Turner had raised the communist subject only to show that he believed in the Progressive labor party. Brother LaRocca said he did not think was encourgaging any communist ideas and that he always worked hard at being a shop steward.

SUMMATIONS:

Brother Tobon pointed out that all documentary evidence had been brought out by Brother Turner himself. Tobon said that Turners membership in the Progressive Labor Party in any context is not favorable to the union because of its policy of being a revolutionary communist organization. Communism is their goal and being a member of that party makes communism a goal of Turner.

Brother Turner in his summation stated that nothing he had ever done was detrimental to the union or to the workers at Varig. He further stated that he was not ashamed of his revolutionary communist ideas and didn't think that expressing these ideas were in the context of developing a movement within the union "at this time at least." He said that he was for democracy but that he has to see democracy work for us at all times. He felt that the whole thing was blown out of proportion because of the shop steward campaign. He admitted being a member of the PLP but felt that being a member in no way put him at odds with the union

FINDINGS AND RECOMMENDATIONS OF THE TRIAL COMMITTEE:

After a review of all the testimony, documentary evidence and summations of the parties the committee unamiously finds the defendant guilty of improper conduct. of a member as defined in the constitution of the IAMAW.

The Trial Committee unamiously recomends that Brother William Turner be expelled from membership in the International Association of Mechinists and Aerospace Workers.

Appendix J

LETTER DATED NOVEMBER 7, 1977 FROM K. RANDLETT WALSTER TO HON. MARK A. CONSTANTINO

RABINOWITZ, BOUDIN & STANDARD
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400 WOODWARD BUILDING
733 15TH STREET, N.W.
WASHINGTON, D.C. 20005
(202) 638-4047

November 7, 1977

The Honorable Mark A. Constantino
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York

Re: Turner v. Air Transport Lodge 1894 of Int'l Association of Machinists and Aerospace Workers, AFL-CIO, et ano. - 77 C 1146

Dear Judge Constantino:

With regard to plaintiff's pending motion for judgment on the pleadings and defendants' cross motion for summary judgment, I wish to advise the court that the plaintiff has examined the "exhibits" submitted by defendants' counsel and has advised me that they appear to be accurate records of the trial proceedings. He would correct the transcript at page 37, line 13, "agreement" should be "disagreement". Thus, although the records were not properly authenticated as required by Rule 56(c), FRCP, we do not object to the court's consideration of the "exhibits".

We also wish to advise the court that plaintiff is withdrawing his claim that he was denied adequate notice of the charges against him (Complaint, Par. 13). As a result, there are no factual issues in dispute in the action.

I am sending a copy of this letter to the Clerk of the Court for docketing and filing.

Respectfully yours,

K. Randlett Walster

KRW:ed
cc: Clerk
Kevin P. Quill, Esq.
Burt Hall, Esq.

Supreme Court, U. S.
FILED
MAY 14 1979
MICHAEL RODAK, JR., CLERK

78-1613

IN THE

Supreme Court of the United States

OCTOBER TERM 1978

No. 1613

AIR TRANSPORT LODGE 1894 OF INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,

Petitioners,

against

WILLIAM TURNER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE RESPONDENT IN OPPOSITION

BURTON H. HALL
401 Broadway
New York, N.Y. 10013
Attorney for Respondent

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IN THE

Supreme Court of the United States

OCTOBER TERM 1978

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AIR TRANSPORT LODGE 1894 OF INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,

Petitioners,

against

WILLIAM TURNER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE RESPONDENT IN OPPOSITION

Statement of the Case

William Turner, a member of petitioner labor unions, while running for the position of Shop Steward, distributed to his fellow members two leaflets (Pet. for Cert., A 80a, 81a; 37a- 41a), in which he discussed union problems, advised fellow members that he was a member of the Pro-

gressive Labor Party, and stated his political ideas, which he characterized as "communist" ones (A 38a, 40a).*

A provision of petitioner IAM's constitution, Art. L, § 3, prohibited, *inter alia,* ". . . advocating or encouraging communism, fascism, nazism, or any other totalitarian philosophy or by other actions giving support to these 'philosophies' or 'isms' . . . ." (A 15a, 25a). Turner's opponents, on the basis of his leaflets, filed disciplinary charges against him, charging him with violating that provision "by advocating Communist ideas and incorporating these ideas with his campaign for Shop Steward" (A 90a). On those charges he was brought before a union trial committee and expelled from membership for "advocating Communist ideas" (A 93a).

Turner exhausted all appellate remedies available to him within the labor organization before commencing this action to have his expulsion, and the union constitutional provision on which it was based, declared void.

The district court granted summary judgment for Turner (A 14a-17a), reinstating Turner to membership and declaring the quoted union constitutional provision void. (The district court's Opinion is at A 23a-41a.) The Court of Appeals for the Second Circuit affirmed (A 2a-13a). The defendant unions have petitioned for certiorari.

---

* An example of the "communist" ideas expressed in Turner's leaflets is as follows (A 40a, 81a):

"ARE MY COMMUNIST IDEAS, 'ANTI-AMERICAN'? No, my communist ideas don't put me on the side of Russia, or China, or Cuba! The working-class in the so-called 'socialist' countries have very little to say. These countries have a capitalist system just like in the United States. The only difference is that in those countries, all the wealth and production-machinery is owned by the government, which is controlled by a ruling-class of high-living 'party' leaders, military leaders, and highly-skilled technicians. Here, in the U.S., the financial industrialist dictatorship over the country is a little more hidden."

ARGUMENT

I

The petitioners have not shown any substantial reason for granting review.

In their statement of "Reasons Writ Should Be Granted" (Pet. for Cert., pp. 8-14), the petitioner unions are unable to show that any question has been decided by the Court below in conflict with any decision of any other Court of Appeals, or in conflict with any applicable decision of this Court, or that there has been any departure from the usual course of judicial proceedings.

Petitioners are therefore reduced to contending that the Court of Appeals has decided some important issue that has not been but should be settled by this Court.

In order to present an important issue, petitioners argue that a labor union—or, rather, the entrenched officials of a labor union—ought to be permitted to expel members who advocate philosophies or political ideas that the officials dislike. Or, more specifically, that they ought to be permitted to expel Turner from membership in the union for "advocating Communist ideas."

Petitioners have been unable to show any provision of the Labor-Management Reporting and Disclosure Act of 1959 (or "LMRDA"), 29 U.S.C. §§ 401, et seq., which would support their contention, and have been unable to cite a single case decided under the LMRDA, in the twenty years that the latter has been in effect, to support their contention.

Quite simply, the petitioners' contention is without merit. It runs counter to the plain language of Sections 101(a)(2) and 609 of the LMRDA, 29 U.S.C. §§ 411(a)(2) and 529,

and it runs counter to the Congressional policy underlying the LMRDA.*

It follows that petitioners have failed to raise a substantial question for review. Their petition for certiorari should, accordingly, be denied.

II

Turner's expression of views and opinions is protected by Section 101(a)(2) of the L.M.R.D.A.

Congress, in Section 101(a)(2) of the LMRDA, 29 U.S.C. § 101(a)(2), guaranteed to "[e]very member of any labor organization" the rights to meet and assemble freely with other members and "to express any views, arguments or opinions," subject only to the organization's reasonable rules for the conduct of meetings, to the responsibility of each member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

And Congress explicitly declared *void* any union constitutional provision purporting to forbid or limit the expression of ideas, and any disciplinary punishment of a member because of such expression. §§ 101(b), 609 of the LMRDA, 29 U.S.C. §§ 411(b), 529.

In enacting the LMRDA, Congress recognized that, in order to eliminate corruption and other abuses in labor management relations, "it was imperative that all union members be guaranteed at least 'minimum standards of democratic process. . . .'" Congress therefore designed Title I of the LMRDA—the "Bill of Rights of Members of Labor Organizations"—to promote the "full and active

* Points II and III of this brief will show that the position advanced by petitioners is contrary to the sections of the LMRDA cited above, and to the Congressional purpose underlying the LMRDA.

participation by the rank and file in the affairs of the union." The rights enumerated in Title I were deemed "vital to the independence of the membership and the effective and fair operation of the union as the representative of its membership." *Hall* v. *Cole,* 412 U.S. 1, 7, 8, 93 S.Ct. 1943, 1947, 36 L.Ed.2d 702, 709 (1973). And see: *American Federation of Musicians* v. *Wittstein,* 379 U.S. 171, 182-183, 85 S.Ct. 300, 13 L.Ed.2d 214 (1964); *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6,* 391 U.S. 492, 497, 88 S.Ct. 1743, 1747, 20 L.Ed.2d 763, 769 (1969). To achieve these ends, Congress sought, in Senator McClellan's words, to "give union members their inherent constitutional rights and . . . [to] make those rights apply to union membership as well as to other affairs of life." By protecting the union members in those rights, Senator McClellan added, "we will be giving them the tools they can use themselves." II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959.

Congress deliberately placed no limit on the range, or kind, of ideas that union members were guaranteed freedom to express. Section 101(a)(2) unequivocally guarantees to *every* member of any labor organization the right to express *any* views, arguments or opinions. The fact that, in this case, Turner chose to label his ideas "communist" ones does not affect his right, guaranteed by Section 101(a)(2), to express them. As this Court remarked in *Kingsley International Pictures Corp.* v. *Regents of the Univ. of New York,* 360 U.S. 684, 698, 79 S.Ct. 1362, 1365, 3 L.Ed.2d 1512, 1516 (1959),

> "[The Constitution's] guarantee is not confined to the expression of ideas that are conventional or shared by a majority. It protects advocacy of the opinion that adultery may sometimes be proper, no less than advocacy of socialism or the single tax. And in the realm of ideas it protects expression which is eloquent no less than that which is unconvincing.

> "Advocacy of conduct proscribed by law is not, as Mr. Justice Brandeis long ago pointed out, 'a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy could be immediately acted on' Whitney v. California, 274 U.S. 357, at 376 (concurring opinion). 'Among free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of law, not abridgment of the rights of free speech. . . .' Id., 274 U.S. at 378."

The free speech guarantee of Section 101(a)(2) is no less broad than the similar guarantee of the First Amendment, at issue in *Kingsley, supra. See: Salzhandler* v. *Caputo,* 316 F.2d 445, 450 (2d Cir. 1963), *cert. den.* 375 U.S. 946 (1963); *International Ass'n of Machinists* v. *Nix,* 415 F.2d 212 (5th Cir. 1969); *Cole* v. *Hall,* 339 F.2d 881 (2d Cir. 1964) and *Ibid.,* 461 F.2d 777 (2nd Cir. 1977), *affirmed, Hall* v. *Cole, supra.*

Quite plainly, that portion of the union's constitutional provision which forbids "advocating or encouraging communism, fascism, nazism or any other totalitarian philosophy" and forbids "giving support to these 'philosophies' or 'isms'" is inconsistent with the free speech guarantee of Section 101(a)(2) and therefore, pursuant to Section 101(b), void.* Equally plainly, the expulsion of Turner violates Section 609 and is likewise void. The statutory scheme is clear, simple and explicit. No one need be in doubt as to what it means.

---

* Petitioners argue (Pet. for Cert., p. 12) that Art. L, § 3 of IAM's constitution was "upheld" in *Int'l Ass'n of Machinists* v. *Friedman,* 102 App.D.C. 181, 252 F.2d 846 (D.C.Cir. 1958). That case, however, dealt with a different clause in Art. L. § 3, prohibiting dual unionism. And more to the point: it was decided in 1958, before the LMRDA was enacted. Thus it did not address any of the issues relevant here.

III.

The right to belong to a political organization is included within the right to express views, arguments and opinions.

The petitioner unions argue that this case does not really involve freedom of speech, since Turner was and is a member of a political organization, the Progressive Labor Party (or "PLP"), which styles itself "communist" (with a lower-case "c") and speaks in Marxist rhetoric.* Thus, say petitioners, Turner has no rights that entrenched union officials are bound to respect. Petitioners' position is without merit.

It is fundamental that the freedom to associate for the purpose of expressing one's ideas—specifically, the freedom to belong to an organization that advocates ideas—is part of, and included within, the freedom of speech. That freedom includes the right to be a member of a political organization such as PLP. *Cf. Healy* v. *James,* 408 U.S. 169, 181, 92 S.Ct. 2338, 2346, 33 L.Ed.2d 266, 279 (1972); *Keyishian* v. *Board of Regents,* 385 U.S. 589, 607, 87 S.Ct. 675, 686, 17 L.Ed.2d 629, 643 (1967); *Baird* v. *Arizona,* 401 U.S. 1, 6-7, 91 S.Ct. 702, 706, 27 L.Ed.2d 639, 646-647 (1971); *NAACP* v. *Button,* 371 U.S. 415, 431, 83 S.Ct. 328, 337, 9 L.Ed.2d 405, 417 (1963); *Louisiana ex rel. Gremillion*

---

* It was not charged against Turner that membership in PLP was in any way wrongful or in violation of the union's constitutional provisions, nor was that given as a reason for his expulsion. Both the charges (A 90a) and the letter of expulsion (A 93a) assert that Turner violated Article L "by advocating Communist ideas."

However, it now appears to be petitioners' position (Pet. for Cert., p. 13) that the failure to charge and expel Turner for membership in PLP was an oversight on the part of "co-workers who are not legal draftsmen familiar with the subleties of the law." Therefore, petitioners suggest, the oversight should be overlooked, despite the statutory requirement that an accused member be served with "written specific charges"; § 101(a)(5)(A) of the LMRDA, 29 U.S.C. § 411(a)(5)(A).

v. *NAACP,* 366 U.S. 293, 296, 81 S.Ct. 1333, 1335, 6 L.Ed.2d 301, 304 (1961); *Bates* v. *Little Rock,* 361 U.S. 516, 523, 80 S.Ct. 412, 416, 4 L.Ed.2d 480, 485 (1960); *NAACP* v. *Alabama ex rel. Patterson,* 357 U.S. 449, 462, 78 S.Ct. 1163, 1172, 2 L.Ed.2d 1488, 1499-1500 (1958). And see: *United Mine Workers* v. *Illinois State Bar Ass'n,* 389 U.S. 217, 222, 88 S.Ct. 353, 356, 19 L.Ed2d 426, 430 (1967); *Brotherhood of Railroad Trainmen* v. *Virginia,* 377 U.S. 1, 5, 84 S.Ct. 1113, 12 L.Ed.2d 89, 93 (1964). As this Court commented in *Sweezy* v. *New Hampshire,* 354 U.S. 234, 250, 251, 77 S.Ct. 1203, 1212, 1 L.Ed.2d 1311, 1325 (1957) (plurality opinion),

> "Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. . . . History has amply proved the virtue of political activity by minority, dissident groups. . . . The absence of such voices would be a symptom of grave illness in our society."

Petitioners base their petition for certiorari, however, upon the position that freedom of speech and freedom to associate ought not to extend to union members who belong to organizations that advocate socialist or communist ideas. Petitioners would thus exclude from the range of free discussion among union members a substantial portion of the world's heritage of social and political ideas.

The reasoning by which petitioners seek to support that position begins with the premise that, because the Communist Party is or once was considered by many to be dangerous, its members who are also members of labor unions should be denied freedom of speech within their unions. That premise, of itself, runs counter to the plain language of Section 101(a)(2)—as well as to the principles

of the Bill of Rights of our Constitution. Compare: *Keyishian* v. *Board of Regents, supra,* 385 U.S. at 606-607, 87 S.Ct. at 685-686, 17 L.Ed.2d at 642-643; *United States* v. *Brown,* 381 U.S. 437, 455-456, 85 S.Ct. 1707, 14 L.Ed.2d 484 (1965); *Elfbrandt* v. *Russell,* 384 U.S. 11, 17, 86 S.Ct. 1328, 16 L.Ed.2d 321 (1966). Petitioners then add to it a corollary to the effect that "groups similiar [*sic*] to the Communist Party" (Pet. for Cert., p. 11) should be "subject to the same principles of law as the Communist Party" (Pet. for Cert., p. 12), by which they mean that members of such "groups" should likewise be denied freedom of speech. And so the spiral of unfreedom expands. Petitioners' reasoning process is all too familiar.

What are "groups similiar to the Communist Party"? Why, say petitioners, all groups that advocate socialist or communist ideas! Thus the spiral of unfreedom extends even to members of the venerable Socialist Labor Party, which petitioners indifferently confuse with the Socialist Workers Party, ignoring the great ideational and historical differences between them. And, of course, in petitioners' view, it extends to PLP. For PLP, openly, advocates the ideas of communism.

Petitioners' argument, though purportedly anti-totalitarian, adopts the familiar logic of totalitarianism. Its premise—the asserted propriety of denying freedom of speech to Communist Party members—illustrates the germ of totalitarian reasoning in itself. But one further step in petitioner's use of that logic requires brief comment: namely, petitioners' contention that PLP and other parties that advocate the ideas of socialism or communism are "similiar" to the Communist Party.

The Communist Party is not a party of ideas. It is a *de facto* agency of the Soviet dictatorship. Its "line," which for it takes the place of ideas, changes whenever Soviet foreign policy changes. It is substantially directed,

dominated and controlled by the Soviet dictatorship, and exists to serve the interests of that dictatorship. *Cf. Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1, 36-54, 57-61, 81 S.Ct. 1357, 6 L.Ed.2d 625 (1961). The Communist Party thus has nothing in common with any organization that advocates the ideas of communism or socialism.

By contrast, the PLP—as Turner's leaflets amply demonstrate—is a party of ideas. It is not an agency of any government. As Turner's leaflet makes clear (A 40a, 81a), it is not beholden to or enamoured of any dictatorship; nor is it dominated or directed or controlled by any dictatorship. Instead, PLP advocates the ideas, and ideals, of communism—and thereby debunks the propaganda of every totalitarian, "Communist" dictatorship.

A party of ideas is in *no* way "similar" to a party that takes orders from a totalitarian dictatorship. Yet by semantic jugglery, petitioners would equate the two. Petitioners' reasoning points up the danger of denying freedom to anyone or to any opinion, lest by verbal trickery the denial be extended to everyone and every opinion.

The fundamental fault of petitioners' position, therefore, lies in its premise: in the proposition that freedom of speech can safely be denied to some persons or to some opinions. Congress saw the danger of such a premise and rejected it. In Section 101(a)(2), Congress declared that *every* member of any labor organization shall have the right to express *any* views, arguments or opinions. Congress' purpose is clear: no member of any labor organization shall be expelled or otherwise disciplined by the labor organization or any officer thereof for expressing *any* view, argument or opinion, or for belonging to *any* political organization.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be denied.

Respectfully submitted,

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